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Civil Procedure Revision Committee

Walter B. Williston Q.C.
Chairman

June 1980

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Advisor	Gordon F. Beddis
Counsel	Professor Garry Watson
Secretary	Patricia Ray

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Ontario

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Ministry of the
Attorney
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Civil Procedure
Revision
Committee

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February 4, 1980

The Honourable R. Roy McMurtry, Q.C.
Attorney General
18th Floor
18 King Street East
TORONTO, Ontario
M5C 1C5

Dear Sir,

Re: Revision of the Rules of Practice

I have the honour to enclose herewith a draft of a proposed revision of The Judicature Act, together with a draft of the proposed Rules of Civil Procedure, which I suggest be attached as a schedule to the Act. In my opinion, it is essential that these rules have statutory approval since they embody many changes in substantive law and some of the rules might be ultra vires without such approval.

I acted as Chairman of the Committee; A. F. Rodger, Q.C., Senior Master, was the Vice-Chairman; Garry D. Watson, Professor at Law at Osgoode Hall Law School was Counsel to the Committee; Gordon F. Beddis, retired Registrar of the Supreme Court of Ontario, acted as our Special Advisor; and Ms. Patricia Ray was the Secretary. We also had the valuable services of the

following part-time research assistants: David Rickerd, Alan Mark, Michael McGowan and Allan Hutchinson.

The following were the terms of reference:

- (1) A thorough re-examination of the principles and policies upon which the Rules of Practice are based and an evaluation of individual rules with a view to:
 - (a) simplifying as much as possible, the procedure in civil actions concentrating on the use of simple language and terminology;
 - (b) decreasing the number of rules;
 - (c) balancing the expense to litigants of the prescribed procedures against convenience, efficiency and social purpose;
 - (d) consideration of alternative, more expeditious and less formal adjudicative procedures; and
 - (e) developing innovative measures to ensure that the procedure in civil litigation is understandable by members of the public, the steps necessary to finalize a dispute are minimal and the cost of such procedure is reasonable.
- (2) In conjunction with the review of the Rules of Practice, a complete examination of The Judicature Act and other statutes affected by proposed changes in the rules.
- (3) Consideration of the nature and function of the Rules Committee under The Judicature Act to determine an appropriate method for continuous review of the rules subsequent to the current proposed revision.

The appointment of a task force for this purpose received the strong endorsement of the Rules Committee. The following is an excerpt from the minutes of the Rules Committee of December 7, 1974:

"[The Chairman] further advised that the Attorney General had given preliminary consideration to terms of reference and methodology for a task force to undertake a comprehensive review of the rules and that he had requested his Advisory Committee on the Central West Pilot Project for their consideration and advice on the terms of reference. He requested the views of the Rules Committee on the establishment of the proposed Task Force. . . . A discussion then followed on the terms of reference for the Task Force undertaking a general review of the rules.

After discussion, it was moved by Judge Grossberg, seconded by Mr. Justice Jessup, that the Chairman advise the Attorney General that the Rules Committee enthusiastically endorsed the appointment of the Task Force and, in general, the suggested terms of reference and that the Rules Committee is interested in the composition of the personnel of the suggested Task Force. MOTION CARRIED."

We had for our assistance a committee of the judges of the Supreme and County Courts, consisting of:

Supreme Court

The Honourable W. D. Parker,
Associate Chief Justice of
the High Court
Mr. Justice P. Cory
Mr. Justice J. Griffiths

Mr. Justice A. R. Jessup
Mr. Justice H. Krever
Mr. Justice J. W. Morden

County Court

His Honour Chief Judge W. E. Colter
Judge S. Borins
Judge P. S. FitzGerald
Judge F. L. Gratton
Judge E. J. Houston
Judge G. P. Killeen

Judge D. F. Mossop
Judge R. G. Phelan
Judge G. J. Sullivan
Judge I. A. Vannini
Judge C. Zalev

We also had the assistance of a committee of the following very distinguished members of the Bar of Ontario:

J. R. Barr, Q.C.
R. E. Barnes, Q.C.
Thomas G. Bastedo
Harvey J. Bliss, Q.C.
Colin L. Campbell, Q.C.
Marvin A. Catzman, Q.C.
Bernard Chernos, Q.C.
Brian A. Crane, Q.C.
Rodica David
W. Reid Donkin, Q.C.
John F. Evans, Q.C.
Bryan Finlay
Morton Greenglass, Q.C.
K. E. Howie, Q.C.

Rodney Hull, Q.C.
Harvey J. Kirsh
Stanley R. Kurisko, Q.C.
John I. Laskin
James C. MacDonald, Q.C.
A. J. McComiskey, Q.C.
H. Lorne Morphy, Q.C.
J. P. Nelligan, Q.C.
P. B. C. Pepper, Q.C.
B. A. Percival, Q.C.
Lloyd W. Perry, Q.C.
R. E. Shibley, Q.C.
H. Douglas Stewart, Q.C.
Blenus Wright, Q.C.

Most of the research was done by our own staff, but we did obtain opinions from Professor Neil Williams of Osgoode Hall Law School and Professors William Lederman and Stanley Sadinsky of Queens University on certain aspects of the proposed rules.

Prior to commencing the drafting of new rules we put together a compilation of the rules of seven jurisdictions which we felt had modern rules which would be of assistance to us in our work. The jurisdictions we chose were Alberta, British Columbia, the Federal Court of Canada, New South Wales, Nova Scotia, the United Kingdom and the United States Federal Rules. We then prepared a list of suggested possible reforms to our procedure which was sent to all members of the Ontario legal profession, asking for their comments in relation to the suggested proposals and asking for any suggestions or improvements they might wish to recommend. A second step was to place public notices in the Globe and Mail informing the public generally of the Committee's existence and its terms of reference and calling upon any interested persons to make written submissions

to the Committee. Finally, a variety of organizations, both within and outside the legal profession, were contacted directly with the request that they make submissions to the Committee. We received numerous replies of a very constructive nature.

The way in which the Committee operated was, after doing initial research into particular subject areas, to prepare working drafts of the proposed rules. These drafts were discussed at length by this Committee and its staff and through this process developed "comment drafts" which were then placed before the Advisory Committees for their consideration. After meeting with both Advisory Committees these comment drafts were then re-worked by the Committee to take into account the comments and criticisms of the Advisory Committees. Many very useful suggestions were obtained from the Advisory Committees and incorporated into subsequent re-drafts. The Advisory Committees were convened for a total of 31 meetings.

In addition to these meetings of the Advisory Committees we attended general meetings called to discuss the draft rules with The Lawyers' Club of Toronto on May 16, 1978; with the Advocates' Society at their Spring Convention on May 26 and 27, 1978 and on April 27 and 28, 1979; with the Civil Litigation Section of the Canadian Bar Association on July 24, 1978 and with the Medico-Legal Society of Toronto on April 19, 1979. Meetings were also held with the local law associations throughout Ontario as follows:

Whitby	-	June 13, 1978
Ottawa	-	June 15, 1978
Sudbury	-	June 19, 1978
Windsor	-	June 27, 1978
London	-	June 29, 1978
Thunder Bay	-	July 26, 1978
Sault Ste. Marie	-	July 28, 1978
Barrie	-	Aug. 3, 1978
Kingston	-	Aug. 16, 1978
Hamilton	-	Sept. 21, 1978

In addition to these regional meetings, various meetings were held with members of the legal profession of other provinces and Europe, as follows:

<u>Date</u>	<u>With</u>	<u>Members of Committee attending</u>
Aug. 1976	Grey Richardson, Q.C., Master of the Court of Queen's Bench, Manitoba	A. F. Rodger, Q.C.
Aug. 8-12 1977	I. H. Jacob, Senior Master of the High Court of England	A. F. Rodger, Q.C. G. D. Watson
Aug. 28 to Sept. 4, 1977	International Congress on Civil Procedure at Ghent	A. F. Rodger, Q.C. G. D. Watson
Apr. 13, 1978	I. H. Jacob, Senior Master when he was in Toronto	Entire Committee
July 10-11 1978	Court officials and members of the Bar in Edmonton	A. F. Rodger, Q.C. G. D. Watson
July 13-14 1978	Court officials and members of the Bar in Vancouver	A. F. Rodger, Q.C. G. D. Watson
Aug. 24-25 1978	Committees of Bar and Bench in Nova Scotia. Nova Scotia appeared to have one of the more modern systems of practice and procedure in Canada and we wished to discuss with the Bar and Bench of that Province any problems they had encountered in working under their new system	W. B. Williston, Q.C. A. F. Rodger, Q.C.
Oct. 19-21 1978	The Canadian Institute for the Administration of Justice, Conference on expeditious justice, in Edmonton	W. B. Williston, Q.C. G. D. Watson
Jan. 26, &	Ontario Sheriff and Court	A. F. Rodger, Q.C.

May 2, 1979	Registrars' Association	G. D. Watson
June 8-9	Committee who are revising	Entire Committee
Nov. 14, 1979	The Rules of Practice of New Brunswick	

Professor Watson in March of 1978 visited the Federal Judicial Centre and the United States Department of Justice in Washington, D.C., to discuss the procedures in the United States respecting arbitration in the course of the judicial system. In July of 1978 Professor Watson while in California looked into experiments with simplified procedures for uneconomical litigation.

We have had lengthy discussions with officers of the Supreme Court and your Ministry concerning the particular problems of their offices, in particular we have discussed the Act and/or the Rules with Mr. R. B. Peterson, the Registrar of the Supreme Court of Ontario; Mr. R. W. Schurman, Director of Supreme, County and District Courts, Ministry of the Attorney General; Mr. S. B. McCann, Counsel, Policy Development Division, Ministry of the Attorney General; Master W. C. McBride, Master Gordon Saunders and Master G. W. Dunn; Mr. W. F. Shaughnessy, Registrar of the Court of Appeal; Mr. A. P. Bridges, Registrar of the Divisional Court; and Mr. E. J. McGann, Accountant of the Supreme Court of Ontario.

When faced with difficult decisions or problems we discussed the revision of the Rules and The Judicature Act with your Deputy Minister. We are extremely grateful for the assistance and guidance he afforded us throughout our task.

We received written briefs from The Advocates' Society outlining its position with respect to various matters which were the subject of revision: (a) working draft of the rules, (b) the divorce rules, (c) costs, and (d) The Judicature Act.

My reason for setting forth the details of all of these meetings is to emphasize the wide circulation that the drafts of the proposed rules received among the members of the Bench and the Bar of Ontario and to acknowledge the great assistance which the Committee received as a result of such meetings. In particular, we were able to ascertain the problems of litigants outside of Toronto in the various county towns throughout the Province. We are indebted to those people who gave so generously of their time to assist us.

When The Judicature Act was first drafted a copy was sent to all of the judges of the Supreme Court of Ontario and all judges of the County Courts in the Province. As a result thereof, the judges of the Supreme Court appointed a committee under the chairmanship of Mr. Justice Osler to discuss our draft. We had a number of very useful meetings.

The committee of the judges under the chairmanship of Mr. Justice Osler consisted of the Chief Justice of Ontario, the Associate Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of the High Court, Mr. Justice Arnup, Mr. Justice Keith and Mr. Justice Grange. Mr. Justice Osler has written to me in part as follows:

"You have been good enough to give the members of the Court, acting through this Committee, the opportunity to comment upon and make suggestions regarding Parts I and II of the draft Act you propose. We have fully availed ourselves of this opportunity and we appreciate that you have taken into consideration, and largely given effect to, our suggestions. You are, of course, at liberty to inform the Attorney General of the opportunity we have been given to examine and to comment upon these drafts."

The draft of The Judicature Act was also sent to our Advisory Committees of the Bar and the Bench and to The Advocates' Society. The Advocates' Society appointed a committee to study the draft. I attended a number of meetings with that committee and the directors' meetings of The Advocates' Society for the purpose of discussing our draft of the Act.

I do not propose to outline in detail all of our proposed amendments, but to bring to your attention changes of particular significance.

THE JUDICATURE ACT

Section 7

We have recommended that the number of judges of the High Court be increased to 44. This is the number which the Chief Justice of the High Court and the Osler Committee considered as the bare minimum necessary to carry out the work of the Court. For an explanation in advising for an increase to this number I enclose herewith a copy of a letter of Mr. Justice Osler to me dated December 4, 1979, together with a copy of the accompanying explanatory note.

Section 19 - The Divisional Court

The idea of having a specialized Court to deal with problems of administrative law was, as originally conceived, an excellent one. However, the Court fell into some disrepute owing to the very long delays in getting the proceedings heard and disposed of. This delay was occasioned by the fact that there was no central core of judges who sat on the Court, but assignments to the Court were made from time to time from among all or most of the judges. Therefore, the specialization originally intended was aborted.

I may say that in our original draft of The Judicature Act we had proposed that there be a permanent Divisional Court which, in addition to its present jurisdiction, would hear all appeals from the County Courts. The reason for the recommendation that there be a permanent Divisional Court was because of the strong criticism on the part of the Bar over the long delays in getting their cases heard and the lack of consistency in the decisions of the Court.

The proposed amendment to have appeals from the County Courts go to the Divisional Court rather than the Court of Appeal received almost unanimous and strenuous opposition from the judges of the County and District Courts and others; after discussing the matter with your Deputy Minister, it was decided to drop this proposal.

The judges of the Supreme Court were strongly opposed to a permanent Divisional Court, basically on the ground that very few of the present members of the judiciary would be willing to spend the rest of their working lives in such a

specialised Court.

Senior Master Rodger and I had a number of meetings with the Chief Justice of the High Court, the Associate Chief Justice of the High Court and Mr. Justice Osler, and with a committee of The Advocates' Society, and as a result we have submitted to you a proposal whereby the judges appointed to the Divisional Court would hold office for a minimum of one year. Under this proposal there will, in my opinion, be a sufficient degree of specialisation and expertise to handle the work competently and expeditiously. This proposal has the approval of the Chief Justice of the High Court, the Osler Committee and the committee of The Advocates' Society.

The work of the Divisional Court will also be greatly expedited by a recent amendment whereby a proceeding in the Divisional Court can be disposed of by one judge, where the Chief Justice is satisfied from the nature of the issues involved and the necessity for expedition that it can and ought to be heard by one judge.

Section 35 and 36 - The Rules Committee

We were expressly asked to consider the nature and function of the Rules Committee under The Judicature Act to determine an appropriate method for continuous review of the rules subsequent to the current proposed revision. We consider that the present Rules Committee has worked efficiently and well and has been responsible for bringing in many remedial measures over the years which have been of great advantage to litigants. We do not recommend any change in substance or composition. We have to some extent clarified and extended

the powers of this Committee. It might be of assistance to the Rules Committee if it had a research assistant charged with the responsibility of keeping abreast with and informing the Rules Committee of procedural changes in other jurisdictions.

We would also recommend that it be suggested to the Rules Committee that before passing any amendments to the rules of serious consequence, that the proposed amendments be published in the Ontario Law Reports in sufficient time to give the profession an opportunity to make comments and suggestions. We do not think that this should be a statutory requirement to give validity to the amendments, but is based on our experience of receiving much help and guidance from the profession at large as to our proposed amendments.

Section 40 - Attendance at a Conference

This Section was inserted at the specific request of the Chief Justice of the High Court, who stated

"The purpose of the proposed amendment is to permit the Dominion Government to pay the expenses of a judge who either the Chief Justice or I have directed to attend a meeting, conference or seminar.

I am told that this is similar to the provisions in the British Columbia Act and permits payment of expenses which are not otherwise covered."

Section 42 - Administration of Law and Equity

The wording of this Section has clarified and simplified the present Section, but there is no basic change in the law, except that we have omitted Subsection 9 of Section 18 of The Judicature Act. This is a long and cumbersome

section which would seldom, if ever, be used in general litigation. If it is considered that such a section should be retained, our suggestion is that it be taken out of The Judicature Act and inserted in some other act, e.g. The Mortgage Act.

Section 51 - Interim Recovery of Personal Property

This Section covers the matters presently dealt with by The Replevin Act, R.S.O. 1970, c. 412. We have considered that this is a procedural matter which should be covered in The Judicature Act rather than by special statute. We have simplified the procedure and recommend that when this Act is passed The Replevin Act be repealed.

Section 54

We had originally recommended that the Court have power to relieve not only against penalties and forfeitures, but also against acceleration clauses. The committee of the Advocates' Society strongly objects to the Court having power to relieve against acceleration clauses without a special study being made as to the restrictions to be placed on the granting of such relief. While we feel that the Court ought to have such power, we were still guided by the wishes of the Advocates' Society and we recommend that such a study be made, if possible, by the Law Reform Commission.

Section 61 - Interest Rates, Section 62 - Pre-judgment Interest, Section 63 - Post-judgment Interest

The present Section 38 and 40 of The Judicature Act

(passed in 1977 and 1979 respectively) have received the strong approval of the Bar. However, they have been difficult to operate administratively due in part to the long delay in the publication of "The Bank of Canada Review". We considered very carefully a memorandum prepared by R. B. Peterson pointing out the difficulties and have re-drafted these provisions with a view to overcoming the administrative difficulties referred to by Mr. Peterson.

Section 91 - Official Examiners

Apart from nomenclature, we have made no substantial change in the present practice, as we understand that your Ministry is reviewing the present arrangement in the light of the Report of Mr. Mendel Green, Q.C.

Section 105 - Time of Coming into Force of the Act

We recommend that the Act and Rules come into force at a date fixed by the Act rather than by proclamation and that the date be adequate to give the profession and the judges and the court staff adequate time to read and absorb the changes. We would suggest a delay not less than six months be given between the passage of the Act and its implementation to give the Canadian Bar Association, the Advocates' Society and the Law Society of Upper Canada adequate time to hold seminars to bring to the attention of the profession the very substantial changes being made to The Judicature Act and the Rules.

THE RULES OF CIVIL PROCEDURE

We have attempted to make the Rules more intelligible and easier to use by giving them a coherent and rational organization and a clear presentation and lay-out. Simplifying the language and terminology of the rules was of serious concern to the Committee. While we wished to use language that the public understands, we did not wish to sacrifice the precision of legal expressions that are well understood by reason of use and judicial interpretation. However, we felt that the present rules included a variety of archaic terms which could be changed without loss of precision. For example, change of "ex parte" to "without notice", "guardian ad litem" to "litigation guardian" and "viva voce" to "oral" should cause no difficulty. We also avoided the use of such expressions as "fieri facias", "venditioni exponis", "judgment in seisin", "writ in satisfaciendi", "writ of capias", "discover", "bailiwick", "eloigned", and "in withernam". However, certain terms such as "chose in action", "security for costs", "levy" and "sequester" which have clearly defined meanings we did not change for fear of leading to the obscurity of imprecise language.

Rule 2

We have attempted to abolish the concept of procedural nullities which in the past has caused serious injustice and delays. See for example Kaltenback v. Frolic, [1948] O.R. 116, Crane Ltd. v. McKeown (1923), 25 O.W.N. 455, Dredge v. Greer [1961] O.W.N. 185. See also Rules 5.04 and 10.03. We have

provided for very wide powers of amendment.

Rule 5

The wording of the present Rules 66 and 67 have been simplified to make the Rules more intelligible and to make it clear that multiple claims and parties may be joined not only where the rights to relief arise out of the same transaction or series of transactions or occurrences, but also where damage has been caused to the same plaintiff by more than one person and there is doubt as to the person or persons from whom he is entitled to relief or the respective amounts for which each may be liable.

Rule 9 - Unincorporated Associations

At the present time any proceeding against an unincorporated association, which is not a partnership, is a nullity. Under the present Rule 75 it is sometimes possible to commence proceedings by way of a representative action. However, this has been entirely unsatisfactory since it has been held in a number of cases that the representative order cannot be made in tort actions unless it is alleged that the association is possessed of a trust fund and that the persons named as defendants are trustees of it. See Barrett v. Harris, (1921) 51 O.L.R. 484. In defining associations we have excluded trade unions and employers' associations because of representations from the Ministry of Labour.

Rule 14 - Class Actions

We are convinced that the present procedure respecting class actions is in a very serious state of disrepair. The

rules cry out for amendment and we have drafted rules but have been asked by the Ontario Law Reform Commission not to submit our recommendations until it has completed its studies. (See your letter of November 17, 1976 to the chairman of the Ontario Law Reform Commission).

On May 2, 1979 the Chairman of the Ontario Law Reform Commission wrote me as follows:

"Many thanks for your letter of April 26, 1979. Thank you also for the copy of the Draft Class Action Proposal, sent therewith.

Work on our Class Actions Project has not progressed as quickly as we would have wished. This has been due to the priority that we have afforded to our Report on Sale of Goods. We are, once more, heavily involved in research on Class Actions and hope to make very substantial progress in the course of this year."

This is where the matter stands to the best of my information.

In the circumstances we have not changed in substance the wording of present Rule 75, but we have under Section 36(b) of The Judicature Act given the Rules Committee power to make rules (subject to the approval of the Lieutenant-Governor in Council) to "provide for class actions and the remedies available thereunder". It would therefore be possible after the Ontario Law Reform Commission has completed its studies for the Rules Committee to pass an adequate set of rules relating to class actions without requiring further legislation.

Rule 16 - Originating Process

We have eliminated the Writ of Summons and recommended that all proceedings be commenced by a Statement of Claim, a Notice of Application, or a Petition. We considered that the procedure of issuing a Writ and requirement of the filing of

an Appearance caused additional documents to be used which served no useful purpose but which lengthened the time of litigation and in certain cases did cause procedural difficulties, e.g. a Writ of Summons could not be served out of the jurisdiction unless the defendant was a British subject. The Writ of Summons is not used in many of the other provinces in Canada, e.g. Nova Scotia, Manitoba, Alberta and Prince Edward Island. In discussing the question with members of the Bench and Bar of Nova Scotia, Alberta and Manitoba we were assured that no difficulties whatever had arisen by reason of the abolition of the Writ of Summons. However, the members of the Advocates' Society in Ontario were very apprehensive lest they did not have sufficient time to prepare a Statement of Claim prior to an expiration of a limitation period, and in Ontario there still exist some very short limitation periods. We therefore provided that where there is insufficient time for a Statement of Claim to be prepared an action may be commenced by issuing a Notice of Action upon which there shall be endorsed a brief statement of the nature of the claim, and that where a Notice of Action is used the plaintiff shall file his Statement of Claim within thirty days of issuing a Notice of Action and serve both documents together.

Rule 18 - Service of Process

In addition to the ordinary methods of personal service, we have provided for service by certified mail or by leaving the document with an adult at the defendant's place of residence.

We have also expanded the powers of the Court to allow substituted service.

Rule 19 - Service Outside of Ontario

The instances in which an originating process may be served outside of Ontario without leave have been somewhat expanded and the grounds on which such service may be set aside have been clarified. Also the court has been given new and additional power to permit service out of Ontario with leave.

Rule 21 and 22 - Default Proceedings and Summary Judgment

We have recommended the abolition of the Specially Endorsed Writ and its replacement by a general summary judgment procedure. The Specially Endorsed Writ process was originally devised so that on a claim for debt or liquidated demand the defendant, in order to defend, would have to file an Affidavit of Merits on which he could be cross-examined, and then the plaintiff had the opportunity to move for judgment if there was no defence to the action. However, this procedure has involved an horrendous waste of Court time. In the past years there have been literally thousands of motions to strike out Special Endorsements. In addition, it has been very seldom that the plaintiff has been able to obtain judgment if the defendant has filed an Affidavit of Merits. No matter how shadowy or unlikely a defence is disclosed by the Affidavit, the Courts have been exceedingly reluctant to allow the plaintiff to obtain judgment without giving the defendant the right to go to trial. We have provided for a summary judgment procedure which can be used in virtually all types of actions. This procedure

is available either to the plaintiff or the defendant. Even in cases where summary judgment is refused, the Court may make an order specifying what material facts, if any, are not in dispute and defining the remaining issues, imposing terms on the right to proceed to trial and ordering that the action be placed forthwith or within a specified time on a list of cases requiring speedy trial.

Rules 23 and 24 - Determination of Question of Law without Trial and Stated Case

Many cases which in essence turn on the determination of a question of law presently go through the laborious process of a long trial in order to get such a question determined. We have provided a simplified procedure for the determination, prior to trial, of any question of law that may **either** dispose of the action, shorten the trial, or result in a substantial saving of cost. We would expect that such a procedure would enable many actions to be terminated or quickly settled as a result of such determinations.

Rule 27 - Pleadings

These rules have been simplified, but there are some differences in substance e.g. (a) parties are given the right to plead any fact that has occurred since the commencement of the action, notwithstanding that such fact may give rise to a new claim or defence; (b) general denials will no longer be a sufficient pleading.

Rule 29 - Cross-claims

In order to avoid the more complicated procedure of a third party claim, where the claim over by one defendant is

against his co-defendant, we have provided for a more simplified cross-claim procedure.

Rule 30 - Third Party Claims

The present rule regarding the availability of a third party procedure (Rule 167) has caused serious difficulty owing to different and restrictive interpretations of the words "Where a defendant claims to be entitled to contribution or indemnity or other relief over". We have provided that a defendant can commence a third party claim where a third party is or may be liable to the defendant for all or part of the claim of the plaintiff, or is or may be liable to the defendant for any other relief relating to the subject matter of the main action, or the third party should be bound by the determination of some issue arising between the plaintiff and the defendant. The procedure is therefore very much broadened and will eliminate much archaic learning devoted to a restrictive interpretation of the term "other relief over".

Rule 31 - Discovery of Documents

We have eliminated the necessity of serving a Notice to Produce and instead have required parties to automatically deliver an affidavit of documents and requiring him to take all documents disclosed by him to his Examination for Discovery and to the trial of the action without further notice. Under the present practice there is a prohibition on cross-examinations of Affidavits of Production. We recommend that such a cross-examination be allowed. We have also provided for a Notice to Admit the authenticity, dispatch or receipt of specified documents.

Rules 32, 33 and 34 - Examinations for Discovery

We have largely expanded the scope of discovery. One of our main problems was concerned with the extension of the right to Examination for Discovery of non-party witnesses. In order to ascertain the facts prior to trial, it is often highly desirable that there should be a right to examine persons who are not parties to the action. We were, on the other hand, very concerned with the additional costs and time that could be expended on such examinations. We were aware of many unfortunate examples in the United States of America, where the wealthy had an overwhelming advantage against the persons who could not afford to indulge in such expensive procedures. We have therefore recommended a compromise procedure whereby there may with leave of the Court be an examination of any person who was at any relevant time an employee, agent or spouse of a party; was, at any relevant time, an officer, director or auditor of a corporate party; is, or was, at any relevant time, an officer, director or employee of a corporation that was, at such time, a subsidiary or affiliate of a corporate party; or is a potential witness, where the Court is satisfied that the applicant was unable to obtain the relevant information from those he was entitled to examine for discovery or from the person sought to be examined. As a result of an expanded rule as to the discovery of parties, and disclosure of documents, the need to examine non-parties for discovery may be less pressing than it is today.

Rule 36 - Medical Examination of Parties

Section 78 of the present Judicature Act empowering the courts to order the physical examination of a party has not been included in the new Judicature Act. Today in many Supreme and County Court actions, medical examinations are an integral part of the discovery process and we believe it is much more convenient to include the provision authorizing medical examinations in the discovery section of the Rules rather than The Judicature Act. This is in line with the approach taken in other provinces in rewriting their Rules.

In addition, we have somewhat extended the availability of the procedure and streamlined it. The present Section 78 of The Judicature Act applies only to a proceeding for the recovery of damages in respect of bodily injury. We have broadened the rule to apply to any case where the physical or mental condition of any party to an action is an issue. For example, a physical examination may be essential in a claim for an annulment of a marriage or a psychiatric examination may be desirable in some custody cases.

The new medical examination procedure should also be available in various courts other than the Supreme and County Courts. Hence we recommend that the rule making powers given to the Provincial Court (Family Division), the Provincial Court (Civil Division), and Small Claims Court and the Unified Family Court, be amended to specifically authorize the passing of rules providing for court ordered medical examinations. We further recommend that each of the rule making bodies enact a

rule similar to our Rule 36.

Rules 38 and 39 - Motions and Applications

Throughout the Rules we have used the term "application" to refer to an originating motion and the term "motion" to refer to an interlocutory proceeding in an action. Under Rule 16.04 we have extended the powers of the Court to dispose of a proceeding by way of application to the Court. The reason is that this procedure is simpler and more expeditious, i.e. the evidence can be given by affidavit and examinations for discovery and the production of documents are eliminated. We have therefore extended the practice to include all cases where it is considered there will be no substantial dispute of fact, e.g. any case which depends on the construction of documents or statutes or regulations. We have expanded the powers of the Court to grant relief on an originating application i.e. an injunction.

We have increased the jurisdiction of local judges sitting outside of Toronto to hear motions and applications that arise in their counties. In travelling through the Province one of the most serious complaints of the Bar outside of Toronto was the fact that lawyers had to come to Toronto to have motions and applications disposed of at considerable expense to their clients. The extension of the jurisdiction of the local judges will not only be more convenient and less expensive for the litigants outside of Toronto, but will result in a considerable saving of the time of Supreme Court Judges.

We have also, at the suggestion of lawyers residing

outside of Toronto, made provision for the hearing of motions by conference telephone where the parties consent.

Rule 47 - Setting Actions Down for Trial

A party setting an action down for trial is deemed to be ready for trial without the necessity of serving a Certificate of Readiness and all other parties are deemed to be ready for trial at the expiration of 60 days thereafter.

We have provided a separate list of actions requiring speedy trial on which only those cases in respect of which speedy trial has been ordered shall be listed.

It is also provided (in Rule 26) that where an action has not been terminated or set down for trial within one year of the filing of the Statement of Defence the Court may fix a deadline within which the case must be set down for trial or dismissed for want of prosecution. We have provided a procedure for having the Chief Justice of the High Court in special cases fix a date for trial upon written application to the Chief Justice. This is similar to the provision now existing in the Federal Court and will avoid the havoc created by too many judges fixing dates for trial.

Rule 49 - Offer to Settle

We have provided a procedure whereby parties can make written offers to settle which will not be disclosed to the court until after the action has been disposed of, but if a party fails to accept such an offer and obtains a judgment less favourable than the settlement offered to him, cost sanctions

can be imposed. It is my opinion that this will have a very salutary effect on the number of cases which are settled. The present practice of payment into court, though retained, is not adequate (a) because it applies only to monetary claims, and (b) it is only the defendant who can make an offer by payment into court.

Rule 50 - Pre-trial conference

This rule as originally drafted by this Committee has already been introduced by the Rules Committee as Rule 244. It already has had a very dramatic effect in increasing pre-trial settlements. We have proposed only minor changes.

Rule 52 - Expert Witnesses

We have provided that any party intending to call an expert witness at trial shall, not less than ten days prior to the trial, serve upon every other party to the action, a copy of a report, signed by the expert, setting out his name, address and qualifications and the substance of his proposed testimony. We think this is a desirable rule, so that the cross-examination of an expert can be prepared without the necessity of a counsel for the opposite party having beside him in court another expert. This is tied in also with Rule 52.03 which allows a medical report to be admissible in evidence. This rule would replace Section 52 of the Evidence Act for the Supreme and County Courts.

We have also provided that where for any reason it is impractical or inconvenient for an expert to attend at trial, the party may obtain an order to examine the witness before trial for the purpose of using his evidence at trial. It is

provided that the examination may be recorded by videotape or other similar means.

Rule 53 - Taking of Evidence Prior to Trial

We have combined the different procedures for taking de bene esse and commission evidence into one simplified procedure common to both. This rule provides for a simplified procedure in lieu of the present practice of Letters Rogatory. Under the old practice for taking commission evidence it was necessary for the parties to attend and only if the witness refused to appear would Letters Rogatory be issued. This involved an intolerable waste of time and under our proposed revision the court may provide for the issuance of a letter of request directed to the appropriate authority in the jurisdiction in which the witness is to be found, requesting the issuance of such process as may be necessary to compel the witness to attend and submit to examination before the Commissioner.

Rule 55 - Evidence at Trial

A dramatic innovation is that at the trial of an undefended action, the evidence by or on behalf of the plaintiff may be given by affidavit unless, in any particular case, the trial judge requires the plaintiff to call oral evidence. This rule will save many hours of the time of the court, counsel, and witnesses. It will apply not only to divorce actions, but also to undefended damage claims where today it is necessary to call automobile mechanics and other expert witnesses to prove a claim that is not in dispute. It cannot be said that affidavit evidence is less reliable than oral testimony. It has been my experience that persons are often much more careful in what

they say in a carefully prepared and thought out affidavit than what they might casually say in oral evidence. The rule contains the safety valve that if a judge is not satisfied with the affidavit evidence he can require the plaintiff to prove his case by oral evidence.

We have provided that a party calling as a witness at trial an adverse party or an officer or a director of a corporation that is an adverse party, may cross-examine him.

Rule 58 - Security for Costs

We have provided that if a plaintiff is a corporation and there is good reason to believe that it has not sufficient assets in Ontario to pay the costs of the defendant, it may be ordered to furnish security for costs. This provision is to protect the defendant in the case of a "shell" corporation which brings an action and escapes any liability to pay costs because it has no assets.

Rule 59 - Costs

This rule is not innovative and in substance follows the present practice. We had originally drafted a rule which tied the costs more closely to the amount involved in the action. The Advocates' Society strongly objected to our suggested draft rule on the grounds that it would be a form of having litigation on a contingency fee basis, and that it would under-compensate in the case of smaller claims and over-compensate when large amounts were involved. We therefore, with the aid of a committee appointed by the Advocates' Society, redrafted the rules to be in conformity with the present practice and

philosophy. No change in substance has been made to the present practice, except that there is only one tariff which applies to both Supreme and County Court cases, allowing the taxing officer a great deal of discretion in setting fees to be allowed. Our proposed Rules contain no provision for the procedure on the taxation of costs as between a solicitor and his client since we understand that the Ontario Law Reform Commission has drafted new proposed legislation in respect of this matter which includes the procedure on such a taxation.

Rule 61 - Enforcement of Judgments

The present rules are totally unsatisfactory. Ontario has become well known as one of the debtors' havens in the English speaking world due largely to the fact that the methods of collecting and enforcing judgments are archaic, expensive, and ineffectual. However, the Ontario Law Reform Commission is presently engaged in a study concerning the enforcement of judgments. Until the Commission makes its report it is not possible for significant new rules to be enacted. For example, it would be very desirable that there be a central registry where all of Ontario Writs of Execution could be registered. At the present time the successful party has to guess in what county the defendant has assets, particularly real property, and if he does not know where a defendant has land the defendant may well sell the land and abscond with the proceeds before a Writ of Execution is issued in that county. There are, however, serious administrative and computer problems involved in the institution of a central registry office. These are problems that we simply cannot resolve until the Ontario Law

Reform Commission has made its report. We have therefore in essence adopted the present rules, trying to simplify and clarify them without making any recommendation for change in substance.

Rule 64 - Stay of Proceedings Pending an Appeal

Under the present Ontario practice in most proceedings there is a stay of execution pending an appeal and security is not required. Under the rules in many other provinces, a party wishing to have executions stayed pending an appeal must provide security. We thought this procedure to be too harsh and we have provided that where any judgment appealed from awards an injunction, a mandamus or maintenance under the Divorce Act (Canada) or support under The Family Law Reform Act 1978, or the custody of or access to a child, there shall be no stay of proceedings to enforce the judgment pending the disposition of an appeal therefrom, unless ordered by the judge presiding at the trial or by a judge of the appropriate appellate court. In all other cases there is a stay of execution pending the appeal but such stay does not prevent the entering of judgment, the issuing of a Writ of Seizure and Sale and the filing thereof in the office of the Sheriff or recording it in the Land Titles Office. However no other proceedings to enforce the judgment shall be taken unless otherwise ordered. The difference is that the appellant's assets cannot be seized or sold pending the appeal, but the Writ of Seizure and Sale will prevent him from selling his lands pending the appeal. Moreover, the period of one year from the time the Writ is filed in the Sheriff's office which must expire before the land can be sold

by the judgment creditor will be running in the meantime.

Mortgage Actions

The time for redemption has been reduced from six months to three months.

The Divorce Rules

These rules have been substantially redrafted. They tie in with the rules relating to the Family Law Reform Act and the Child Welfare Act. The rules relating to these matters have been drafted in such a way as to make them readily severable from the remainder of the rules in the event that it is decided to provide for province-wide Unified Family Courts.

As you know, rules relating to divorce proceedings must be passed under Section 19 of the Divorce Act by the Trial Division of the Supreme Court or by the Court of Appeal. On October 1st, 1979 we sent copies of a suggested re-draft of the rules on divorce proceedings and the Family Law Reform Act proceedings to the Chief Justice of Ontario. I enclose herewith a letter of October 1st, 1979 from the Vice-Chairman to the Chief Justice of Ontario.

ARBITRATION IN THE COURSE OF JUDICIAL PROCEEDINGS

In the course of our research we studied, at your request, procedures for arbitration in the course of judicial proceedings which have been in use in various parts of the United States. We do not recommend that such procedures be adopted in Ontario at the present time as the usefulness of such a procedure has not yet been substantiated by the experience in the United States. Enclosed herewith is a document prepared by Professor Watson entitled "Arbitration Within the Judicial Process".

In the terms of reference we were required to make a complete examination of other statutes affected by the proposed changes in the Rules. There are a number of statutes which will need amendment because of our proposed changes in The Judicature Act and the Rules. However, we do not think that these amendments should be a part of The Judicature Act. We recommend that these amendments be contained in a separate statute. We have substantially completed the drafting of the basis for such a statute but it cannot be completed for about another two weeks. We did not wish to hold up this report pending the completion of that work.

I would like to express to you, sir, the deep appreciation I feel for the work of the Senior Master. He has been the backbone of this Committee. He has brought to the Committee a wealth of intelligence and experience and has spent countless hours and energy in the drafting of these Rules. It is he who did the substantial part of the work in redrafting Rules in the light of comments and suggestions by our Advisory Committees and our meetings with the profession. While doing a monumental amount of work for this Committee he still administered the work in the Master's Office.

Professor Watson has given us the benefit of his vast academic experience and his knowledge of the practice and procedures in other jurisdictions. He brought a third and indispensable dimension to this Committee.

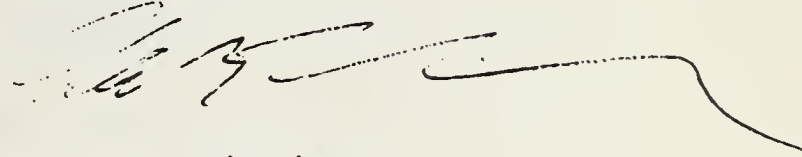
Mr. Gordon Beddis gave us the benefit of his many years of experience as Registrar of the Supreme Court of Ontario and

his vast knowledge of the administrative problems involved in the operation of the courts. He, together with the Senior Master, was mainly responsible for the drafting of the forms.

The whole of the staff worked diligently and efficiently. Particular mention should be made of the work of Mrs. Doreen Connor and Mrs. Valerie Lawrence.

I am your most humble and obedient servant.

Yours truly,

A handwritten signature in dark ink, appearing to be 'W. B. Williston', with a long, sweeping horizontal line extending to the right.

W. B. Williston

WBW/et



Walter B. Williston, Q.C.
Chairman

A. F. Rodger, Q.C.
Senior Master, S.C.O.
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5th Floor
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M5C 1C5

October 1, 1979

The Honourable William G. C. Howland
Chief Justice of Ontario
The Supreme Court of Ontario
Osgoode Hall
Toronto, Ontario

Dear Chief Justice:

We are enclosing for distribution by you
60 copies of our suggested redraft of the rules on Divorce
Proceedings and Family Law Reform Act Proceedings.

As you know, rules relating to Divorce Proceedings
must be passed under Section 19 of the Divorce Act, by
the trial division of the Supreme Court or by the Court of
Appeal.

Before submitting our Report to the Attorney
General, we would appreciate receiving your assurance that
the judges of the Supreme Court are prepared to pass the
rules relating to Divorce Proceedings in the form they
have been drafted by us in the event that they meet with
the approval of the Attorney General. Should the judges
wish to make any suggestions or objections, we would very
much appreciate having same by October 31st, as our draft
rules must be on the Attorney General's desk no later
than December 31st, and we do require some time to review
any comments we may receive and to redraft these rules
accordingly.

Since proceedings under the Family Law Reform
Act are often connected with Divorce Proceedings, we thought
you should be able to look at the rules relating to both.

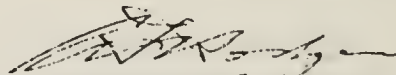
October 1, 1979

The rules, as drafted by us, are the result of the following:

- meetings with our Advisory Committees of the Bench and Bar
- open discussions with the Advocates Society at their Spring Convention
- suggestions submitted by a special sub-committee appointed by the Advocates Society

If you wish to discuss these rules with us, Mr. Williston and I would be pleased to meet with you at your convenience.

Yours sincerely,



A. F. Rodger



December 4, 1979.

DELIVERED

W.B. Williston, Esq., Q.C.,
Fasken & Calvin,
Suite 3000,
Box 30, Toronto-Dominion Centre,
TORONTO, Ontario.
M5K 1C1

Dear Mr. Williston:

I regret that in the material sent to you November 2nd accompanying the proposed amendments dealing with the Divisional Court I failed to make clear some of the mechanics of how it is proposed to operate the Divisional Court. Partly for that reason, I also failed to give you our reasons why it is considered essential to provide for the appointment of additional judges. In passing, I remind you that the total of 44 which we propose is the same as that in your original proposal but the difference lies in our very strong view that there should be 44 judges of the High Court, not 37 High Court judges and seven Divisional Court judges.

I trust the enclosed material will be of some assistance to you.

Yours truly,

J. Osler, J.

per: B.H.

JO*h
Encl.

cc: Chief Justice Howland
Chief Justice Evans
A.F. Rodger, Esq., Q.C.

REPORT OF WILLISTON COMMITTEE

RE: DIVISIONAL COURT

EXPLANATORY NOTE

The basic rationale behind the proposals we have made for the Divisional Court is that of combining to the greatest extent possible the advantage of retaining flexibility in the assignment of judges with the advantage of having a relatively small expert bench available to sit in Divisional Court. The great majority of the members of the High Court continue to believe, as did the Honourable J.C. McRuer in his original recommendations, that the work of the Divisional Court is properly a part of the jurisdiction of the High Court and should not be carried on by a separate court. At the same time, it is recognized as one of the most demanding divisions of the court and very few judges are prepared to devote themselves exclusively to that work for extended periods of time.

As can be readily seen from some of the figures referred to below, the overall work-load of the court has increased very substantially in the last few years and is continuing to do so. The increasing case-load is easily demonstrated but, because until very recently adequate statistics have not been maintained, it is less obvious that the length of time required to try the average case of almost every sort is increasing, though I am fully persuaded that this is the case. Although there is a marked trend towards

a greater proportion of the case-load being in centres outside of Toronto, the actual distribution of cases by type of case and by place is understandably erratic. This makes it necessary that the greatest flexibility be made available to the Chief Justice of the High Court, the Trial List Committee and the trial office staff in the scheduling of cases and the assignment of judges to try them. It may not be generally known that very careful attention is given to the aging of cases and priorities have been established in such a way that the greatest number of cases throughout the Province have now been less than six months on a ready list and it is quite unusual to find a case that has been on such a list for more than one year. The flexibility that has been at least partly responsible for bringing this about would be much reduced if the court were to be divided into two distinct groups.

The Divisional Court has been a part of the work of the High Court since 1972. The work-load has grown from a total of 280 cases in 1973 to 720 in 1978, an increase of 440 per annum. There are substantial indications that this increase has now flattened out and may well remain stable in the near future. At the same time, the time required to dispose of each case has been steadily reduced from an average of .75 days per case in 1973 to an average of .55 days in 1978. The court at first sat irregularly but for some time now has sat continuously in one panel and, under the present Chief Justice, an additional panel has been formed whenever the judicial manpower could be found. Lately, the time a case

must wait upon the list before being heard has been substantially reduced both by the provision of extra panels and especially by the discretion now given to the Chief Justice to designate cases as appropriate for hearing by single judges of the Divisional Court which now, in effect, becomes three courts periodically for the disposition of such cases. Further gains may be expected in 1980 by reason of the designation of a limited number of judges experienced in administrative law as presidents and the formation of panels which will sit together for longer periods of time without change. The appointment of four additional judges will make it possible to provide for simultaneous sittings of more than one panel with greater frequency and to permit the composition of a given panel to remain unchanged for reasonable periods of time.

As an example of how the proposals for manning the Divisional Court might work, I attach a schedule in which I assume 12 judges assigned and divided into three panels of four judges each. It was suggested somewhere that ten judges might be sufficient. It is far more practical to deal with assignments through the Divisional Court in multiples of four. It has long been appreciated that if the health and efficiency of the members of the court are to be maintained and judgments are not to fall badly in arrears, a judgment week must be provided for each judge on the average of once in every four weeks. To have one panel of the Divisional Court sitting continuously therefore requires four judges.

Eight weeks overall is considered to be the maximum period of sitting that most judges can tolerate in the Divisional Court, and this figure has been arrived at after a considerable

amount of research. In addition, eight-week blocks of time facilitate integration with other portions of the High Court work.

In the schedule, each panel is represented by a letter. In any eight-week period one panel will sit continuously, the second will be retained in Toronto and will sit as a panel of the Divisional Court for whatever periods prove to be necessary to keep these lists under control, probably averaging one week per month at first. When not so required, the members will be available for other work in Toronto. The members of the third panel will be available for general assignment wherever their services may be required.

It is, of course, apparent from a glance at the schedule that with eight-week assignments one panel (C) will only occupy the first position once in the course of a year but the term of that panel could well be extended by eight weeks so as to even this up and provide for continuity. Any panel, of course, will be available and may be assigned to sit for additional weeks as necessary. Similarly, vacation sittings will, no doubt, be assigned as required.

I trust that the above helps to make it apparent that the proposed scheme will make possible something very close to the original recommendation of the McRuer Inquiry, namely, that a limited number of experienced High Court judges will be available for quite extended periods of time to form the Divisional Court without creating an institution completely isolated from the mainstream of judicial work and without placing a burden upon the High Court judges greater

than most of them are prepared to tolerate.

I add below a few figures illustrating, to some extent, the increase in the work-load that has been referred to above. These figures make no mention of motions court. Such figures are available but are not readily to hand. It may not be generally appreciated that the hearing of motions now requires the full time each week of four judges and, in every second week, the time of a fifth. Two are required for ordinary motions in Toronto, one serves as Duty Judge and hears all long motions expected to continue for more than two hours, one hears Family Law motions and the fifth divides his time between Ottawa and London for the hearing of motions of all types. It may also be useful to know that, whereas a judgment week every fourth week is established as the norm, during the months of September and October judges who should have been on judgment weeks sat through such weeks on thirty occasions. Such is the present work-load.

	<u>1974-1975</u>	<u>1978-1979</u>	<u>Increase</u>
Criminal	197	297	100
Civil Jury - total	648	777	129
Of which tried -	159	125	- 34
Civil Non-Jury	1,762	2,981	1,219
Of which tried -	713	852	139

The ability to handle the increases on the civil side, particularly in non-jury cases, was made possible, at least in part, by the extensive use of pre-trial, done for the purpose of organizing and shortening trials but which

had, in many cases, the result that settlements were reached. This work has been done on a systematic basis in Toronto from time to time when judges could be made available and outside Toronto by a limited number of judges sitting, more often than not, after 5:00 p.m. and during evening hours. There is a very finite limit to the amount of work that can be done by the present number of judges under those circumstances. One additional fact that may not be generally appreciated is that a judge who is able to complete the cases ready for trial in any out-of-town sitting is required by the Chief Justice to return to Toronto where he is immediately assigned either to non-jury, matrimonial or motions court. Even with the development of all these practices, it has very seldom been possible in any week of the present term to fill all the assignments for which High Court judges were required. Inevitably, there have been cancellations of out-of-town sittings, fewer judges assigned to Toronto Non-Jury than were required and double loads being carried in motions court. The public is being well served by the High Court and by the present system. The cost to the members of the High Court in over-work and risk to health is not generally appreciated. It cannot long continue without the relief and the gain in efficiency that the appointment of additional judges will bring.

SCHEMATIC CHARTDIVISIONAL COURT ASSIGNMENTSTWELVE JUDGES1981

	<u>SITTING</u>	<u>IN TORONTO AND AVAILABLE</u>	<u>GENERAL CIRCUIT DUTY</u>
1st 8 weeks	A	B	C
2nd 8 weeks	B	C	A
3rd 9 weeks	C	A	B

4th 9 weeks

L O N G V A C A T I O N

ANY PANEL MAY BE ASSIGNED AS REQUIRED

5th 8 weeks	A	B	C
6th 8 weeks	B	C	A

2 weeks

S H O R T V A C A T I O N1982

1st 8 weeks	C	D	E
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ARBITRATION WITHIN THE JUDICIAL PROCESS

Schemes for the arbitration of cases which have been filed in court have been in use in various parts of the United States for more than 10 years and recently the use has increased.

The basic ideas of such schemes is that pursuant to rules of court or statute, certain classes of cases (eg. those in which the damages claimed to not exceed a given figure) are automatically assigned (usually compulsorily), less often on consent) at the close of pleadings or discovery, to an arbitration hearing. Typically these hearings are presided over by a panel of three lawyers, but sometimes arbitration is before one lawyer and in some jurisdictions retired judges are eligible to sit as arbitrators. The hearing is adjudicative, the arbitrators hearing each party's case through witnesses etc., though typically the hearing is more informal and considerably shorter than a court trial. The arbitrators have the power to make a binding award in the case which, when made, can be entered and enforced as a court judgment, if not appealed within a specified time (eg. 20 days). An appeal, if taken, is by way of a trial de novo before the court --in effect if an "appeal" is taken the case simply proceeds to trial in the ordinary manner. Frequently the right to appeal is conditional upon the appealing party first repaying the relevant authority (the city, the state or the court) the

arbitrator's fees, which are usually in the vicinity of \$150. Invariably it is provided if at trial the appellant does not obtain a judgment more favourable than the arbitrator's award, he must pay the opposing party's cost of the trial, including attorney's fees. (In this respect the arbitrator's award can be seen as analogous to a payment into court, but one determined by an independent third party, not by the defendant.)

The best known arbitration schemes are those existing in Philadelphia and Ohio. Originally these dealt with smaller claims (up to \$2,000-\$3,000) but in recent years the schemes have extended to include cases up to \$10,000. Similar arbitration programs are also in operation in Massachusetts, Michigan and California and other states. Most recently similar programs have been introduced in several United States Federal District Courts on an experimental basis. These federal court programs extend to much larger cases eg. particular classes of cases, usually personal injuries, where the damages claimed are as high as \$50,000 or \$100,000.

Proponents of these arbitration schemes claim that the schemes benefit litigants and the courts by resolving disputes more quickly and more cheaply for litigants and by bringing about a major reduction in the court's workload. In support of these claims two facts are relied upon. First, the low rate of appeals by trial de novo

for arbitrated cases: typically the rate of appeal is between 5 and 15%. Second, the fact that arbitration usually takes place two to three months after setting down for trial and thus the usual 1-2 year waiting time from setting to trial is avoided.

While arbitration may lead to the benefits claimed the available data from various American states schemes do not clearly establish such claims. The problem is that the data fail to take into account, and thus to give weight to, the normal high settlement rates which characterize the trial lists of all courts in the absence of arbitration schemes. For example, in the non-jury list in Toronto, 55% of all cases on the trial list settle between setting down and the commencement of trial; a figure which has recently been increased to 70% by the use of pre-trial conferences. If we look only at personal injury cases (which are the cases most commonly subjected to arbitration schemes) the figures on the Toronto non-jury list are even higher: 73% of such cases settle between setting down and the commencement of trial, and the rate has been increased 86% by the use of pre-trial conferences.

Consequently, it is not accurate to say that an appeal rate for arbitrated cases of 5-15% per se indicates a major reduction in the court's workload, or indeed any reduction at all. The actual reduction due to arbitration, can only be measured by comparing the court's trial load in the absence of arbitration with its workload when arbitration is employed.

The claim of speeding resolution through arbitration are likely well founded, but possibly overstated through again failing to acknowledge the fact of ordinary settlements. Since settlements occur prior to trial, and in very large numbers, it is not accurate to state that whereas resolution through arbitration takes place two to three months after setting down, without it resolution would take place one to two years later, after trial.

The claim that arbitration leads to a cheaper resolution of the case for litigants also overlooks the fact that in the absence of an arbitration scheme most cases are disposed of by settlements and not by trial. While arbitration may be cheaper than a trial, it will usually be more expensive than resolution through settlement. (And of course, where arbitration is invoked shortly after setting down, many cases which otherwise would have settled and never gone to trial will be forced through the arbitration process.)

Because these arbitration schemes hold some promise for improving the procedural process, but the claims made for them are as yet unsubstantiated, federal courts in the United States have introduced arbitration schemes in several courts on an experimental basis. They have been

introduced on a controlled basis which will permit accurate measurement of their costs and actual benefits. These experiments are being carefully monitored by the Federal Judicial Center, the research arm of the federal courts.

We recommend that the results of these U.S. federal courts experiments with arbitration be watched closely. If they substantiate the claims made for arbitration we recommend serious consideration be given to introducing such schemes in the Supreme and County Courts in Ontario. If it is decided to do so, we urge that initially they be introduced on an experimental basis. Even if the U.S. federal courts report positively on their arbitration programs, differences between those courts and our own could mean the same results might not necessarily follow in Ontario from introduction of arbitration. Hence it would be wise to introduce the new procedure in a way which would permit measurement of their impact.

PROPOSED REVISION

OF THE

JUDICATURE ACT

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THE JUDICATURE ACT

DEFINITIONS

Section 1

In this Act, unless the context otherwise requires,

county includes a district or a judicial district;

county court includes a district court;

Court of Appeal means the Court of Appeal for Ontario;

defendant includes a person against whom any proceeding is commenced;

Divisional Court means the Divisional Court of the High Court of Justice for Ontario;

finance committee means the finance committee appointed by the Lieutenant Governor in Council under this Act;

High Court means the High Court of Justice for Ontario;

judge includes a justice, a Chief Justice, an Associate Chief Justice, an *ex officio* judge and a supernumerary judge;

judgment includes an order or a decree;

master means a master of the Supreme Court and includes the Senior Master, but does not include a local master;

personal property in Section 51 includes goods, chattels, deeds, bonds, bills of exchange, books of account, documents and securities, but does not include any interest in land.

DEFINITIONS

plaintiff includes a person who commences any proceeding;

proceeding includes any cause, action or matter;

rules means the Rules of Civil Procedure;

Rules Committee means the Rules Committee established
under this Act;

Supreme Court means the Supreme Court of Ontario.

INTERPRETATION

Section 2

(1) This Act shall be liberally construed so that all controversies may be speedily and finally determined according to the substantive rights of the parties. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Act or to the rules made pursuant thereto.

(2) Any act in force immediately before the commencement of this Act which is inconsistent with it shall be superceded to the extent of such inconsistency.

(3) Subject to the express provisions of any act, the Crown is bound by, and has the benefit of, this Act and the rules made pursuant thereto.

(4) On the coming into force of this Act, unless the context otherwise requires, in every act,

administrator ad litem means litigation administrator;

certificate of lis pendens means certificate of pending litigation;

guardian ad litem means litigation guardian;

next friend means litigation guardian;

originating motion means application;

originating notice means notice of application;

replevin order means an interim order for the recovery of personal property;

Rules of Practice and Procedure means Rules of Civil Procedure;

subpoena includes summons to witness;

third party proceeding includes a cross-claim;

Writ of Fieri Facias means Writ of Seizure and Sale;

Writ of Summons means a Statement of Claim or a Notice of Action.

PART I

Section 3

This Part applies to the Supreme Court, and Sections 26, 28, 37, 38, 39 and 40 shall also apply, with any necessary modification, to the county courts.

CONSTITUTION AND JUDGES OF THE SUPREME COURT

Section 4

The Supreme Court shall continue to be a superior court of record, having civil and criminal jurisdiction, and it has all the jurisdiction, power and authority that on the coming into force of this Act, was vested in or might have been exercised by the court, and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court.

Section 5

The Supreme Court shall continue to consist of two branches: the Court of Appeal for Ontario and the High Court of Justice for Ontario.

Section 6

(1) The Court of Appeal shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of Ontario, an Associate Chief Justice of Ontario and thirteen other judges to be called justices of appeal.

(2) Where the Chief Justice of Ontario is absent from Ontario or where he is for any reason unable to act, his powers and duties as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario or, where both are absent or unable to act, by the senior justice of appeal who is able to act.

PART I

Section 7

(1) The High Court of Justice shall consist of a chief justice who shall be the president thereof and who shall be called the Chief Justice of the High Court, an Associate Chief Justice of the High Court and forty-four other judges.

(2) Where the Chief Justice of the High Court is absent from Ontario or, where he is for any reason unable to act, his powers and duties shall be exercised and performed by the Associate Chief Justice of the High Court or, where both are absent or unable to act, by the senior judge of the High Court who is able to act.

Section 8

(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court which shall consist of the Chief Justice of the High Court who shall be the president thereof and twelve members of the High Court who shall be assigned by the Chief Justice of the High Court for periods of not less than one year but who may, with their consent, be re-assigned for a further term which may be for less than one year.

(2) Where the Chief Justice of the High Court is absent from Ontario or where he is for any reason unable to act, his powers and duties as president of the Divisional Court shall be exercised and performed by the senior judge assigned to the Divisional Court who is able to act.

Section 9

For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the *Judges Act (Canada)* to hold office only as a supernumerary judge of that court.

PART I

PRECEDENCE OF JUDGES

Section 10

(1) The rank and precedence of the Chief Justices and Associate Chief Justices of the Supreme Court shall be as follows:

1. The Chief Justice of Ontario;
2. The Chief Justice of the High Court;
3. The Associate Chief Justice of Ontario;
4. The Associate Chief Justice of the High Court.

(2) The justices of appeal and the other judges have rank and precedence after the Associate Chief Justice of the High Court, and among themselves according to seniority of appointment.

Section 11

A judge appointed to the Court of Appeal or to the High Court is a judge of the Supreme Court and is *ex officio* a judge of the branch of which he is not a member; and, except where it is otherwise expressly provided, all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority.

OATH TO BE TAKEN BY JUDGES

Section 12

(1) A judge, before entering on the duties of his office, shall take and subscribe the following oath:

*I do solemnly and sincerely promise and swear that I
will duly and faithfully, and to the best of my skill and
knowledge, execute the powers and trust reposed in me as
.....
.....
So help me God.*

PART I

(2) The oath shall be administered to a Chief Justice or an Associate Chief Justice before the Lieutenant Governor, to a justice of appeal by the Chief Justice of Ontario, and to a judge of the High Court by the Chief Justice of the High Court.

Section 13

(1) There shall be a seal for the Supreme Court which shall be approved by the Lieutenant Governor in Council.

(2) In the offices of the local registrars and deputy registrars such seals shall be used as the Lieutenant Governor in Council from time to time may direct, and they shall be impressed on every document issued out of such offices, and every such document and every exemplification and copy thereof purporting to be sealed with such a seal shall be received in evidence in all courts without further proof thereof.

(3) Until other seals are authorized by the Lieutenant Governor in Council, the seals in use shall continue to be used.

SITTINGS

Section 14

Except as otherwise provided in this Act or the rules, the courts and the judges thereof may sit and act, at any time and at any place, for the discharge of any duty that by any statute, or otherwise, is required to be discharged.

PART I

COURT OF APPEAL

Section 15

(1) Except as otherwise provided by statute and subject to the rules, an appeal, including an application for a new trial, lies to the Court of Appeal from:

- (a) any final judgment made by a judge of the High Court;
- (b) any judgment of the Divisional Court, on any question that is not a question of fact alone, with leave as provided by the rules.
- (c) any order for interim relief in respect of any claim made in a divorce proceeding; and
- (d) any final judgment of a local judge of the High Court in respect of any claim made in a divorce proceeding.

(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature.

(3) For the purposes of an appeal to the Supreme Court of Canada, the Court of Appeal for Ontario is and shall be the court of final resort in the Province of Ontario.

Section 16

(1) Except where otherwise provided by any Act or by the rules, every appeal to the Court of Appeal shall be heard before not fewer than three justices of appeal sitting together and always before an uneven number of justices.

(2) An appeal from an order for interim relief in respect of any claim made in a divorce proceeding shall be to the Court of Appeal without leave and shall be heard by one justice of appeal.

PART I

(3) The Court of Appeal shall sit at Toronto or elsewhere in Ontario as directed by the Chief Justice of Ontario.

(4) The Chief Justice of Ontario, when present, shall preside, and in his absence, the Associate Chief Justice of Ontario, and when both are absent, the senior justice of appeal who is present or a justice of appeal designated by the Chief Justice of Ontario shall preside.

(5) The Court of Appeal may sit in one or more panels as the Chief Justice of Ontario directs from time to time.

(6) The justices to sit from time to time and appeals to be heard shall be determined by the Chief Justice of Ontario.

Section 17

(1) The Chief Justice of Ontario may assign any justice of appeal not sitting in the Court of Appeal to perform, in Toronto, the work of a judge of the High Court.

(2) Except as provided in subsection (1), no justice of appeal shall, without his consent, be assigned to or required to perform any duty except as such appertains to him as a member of the Court of Appeal.

(3) Whenever occasion requires or where a vacancy occurs in the Court of Appeal, a judge of the Supreme Court who is not a member of the Court of Appeal may, at the request of the Chief Justice of Ontario and with the concurrence of the Chief Justice of the High Court, sit as a member of the Court of Appeal.

PART I

DIVISIONAL COURT

Section 18

(1) The Divisional Court has jurisdiction to hear, determine and dispose of,

- (a) all appeals to the Supreme Court under any act other than this Act, the *Divorce Act (Canada)*, *The County Courts Act* and *The Unified Family Court Act, 1976*;
- (b) applications for judicial review under *The Judicial Review Procedure Act, 1971*;
- (c) all appeals from interlocutory judgments of a judge of the High Court, except from an order for interim relief in respect of any claim made in a divorce proceeding, with leave as provided by the rules;
- (d) all applications by way of stated case, whether as an appeal or otherwise, to the Supreme Court under any act other than *The Summary Convictions Act*;
- (e) all appeals from final judgments of a master, local judge, local master or other officer of the Supreme Court, except those made by a local judge in respect of any claim made in a divorce proceeding; and
- (f) any other appeal or application where so provided for by an Act or in the rules.

(2) Where by virtue of subsection (1) (a), an appeal is to the Divisional Court, and the right to appeal is only with leave, such leave shall be obtained from the Divisional Court, notwithstanding the provisions of any other statute.

(3) For the purposes of subsection (1), *Supreme Court* shall include the High Court or a judge thereof, the Court of Appeal or a judge thereof or a judge of the Supreme Court.

PART I

Section 19

(1) Except where otherwise provided, every proceeding in the Divisional Court shall be heard, determined and disposed of by three judges sitting together.

(2) The Divisional Court may sit in one or more panels as the Chief Justice of the High Court directs from time to time. When the Chief Justice of the High Court is not sitting, the senior justice sitting shall preside over the panel on which he is sitting.

(3) At least one panel of the Divisional Court shall sit continuously in Toronto except during July and August and sittings may be held elsewhere in Ontario as directed by the Chief Justice of the High Court.

Section 20

(1) A proceeding in the Divisional Court shall be heard, determined and disposed of by one judge of the Divisional Court where the proceeding,

(a) is an appeal under *The Small Claims Court Act*; or

(b) is a matter that the Chief Justice of the High Court or a judge designated by him is satisfied from the nature of the issues involved or the necessity for expedition can and ought to be heard by one judge.

(2) Where a proceeding in the Divisional Court is disposed of by one judge, his judgment is a judgment of the Divisional Court.

PART I

Section 21

(1) The Chief Justice of the High Court may assign any judge of the High Court assigned to the Divisional Court, not needed for the time being in the Divisional Court, to perform any other work of a judge of the High Court.

(2) Where a judge assigned to the Divisional Court is for any reason unable to act, a judge who has not been assigned to the Divisional Court may sit in place of that judge.

MATTERS INCIDENTAL TO APPEAL

Section 22

(1) A justice of the Court of Appeal or a judge of the Divisional Court may make an order or give directions incidental to an appeal or other proceeding in the court of which he is a judge, or make an interim order to prevent prejudice to the claims of any of the parties pending the appeal or proceeding; providing, however, that such direction or order does not involve the decision of the appeal or proceeding.

(2) A justice of the Court of Appeal or a judge of the Divisional Court may exercise the power and authority of the court of which he is a member to:

(a) direct the entry of any judgment or make any order on consent; or

(b) dismiss an appeal or other proceeding for want of prosecution.

(3) Subject to Section 26, every such judgment or order is subject to appeal to the Court of Appeal or the Divisional Court, as the case may be, with leave.

PART I

APPEAL TAKEN TO WRONG COURT

Section 23

Where an appeal is taken to the wrong court, it may be adjourned to the proper court.

APPEALS

Section 24

(1) The court, upon an appeal, has and may exercise such original jurisdiction as may be necessary or incidental to the hearing or determination of the appeal.

(2) The court, upon an appeal, may give any judgment that ought to have been pronounced and may make such further or other order as may seem just.

(3) The court, upon an appeal, has power to draw inferences of fact not inconsistent with any finding of the jury that is not set aside, and if satisfied that there are before it all the materials necessary for finally determining the matters in controversy, or any of them, or for awarding any relief sought, it may give judgment accordingly, but if it is of the opinion that there are not sufficient materials before it to enable it to give judgment, it may direct the appeal to stand over for further consideration and may direct that such issues or questions of fact be tried and determined and such accounts be taken and such inquiries be made as are considered necessary to enable it on such further consideration finally to dispose of the matters in controversy.

PART I

(4) The powers conferred by subsections (1), (2) and (3) may be exercised notwithstanding that the appeal is as to part only of the judgment, and may be exercised in favour of all or any of the parties, although they may not have appealed.

(5) On all appeals, or hearings in the nature of appeals, and on all motions for a new trial, the court or judge appealed to has all the powers as to amendment and otherwise of the court, judge or officer appealed from, and full discretionary power to receive further evidence, either by affidavit or oral examination, as may be directed.

(6) No judge shall sit on the hearing of an appeal from his own decision.

Section 25

(1) A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question that the judge at the trial was not asked to leave to the jury, or by reason of any omission or irregularity in the course of the trial, unless some substantial wrong or miscarriage has been thereby occasioned.

(2) If it appears that a substantial wrong or miscarriage was so occasioned, but it affected part only of the matter in controversy or some or one only of the parties, the court may give final judgment as to any part or any party not so affected, and direct a new trial as to the other part only, or only as to the other parties.

(3) A new trial may be ordered upon any question without interfering with the decision upon any other question.

PART I

RESTRICTIONS ON APPEALS

Section 26

(1) No appeal shall lie from:

- (a) an order allowing an extension of time for appealing from a judgment or order;
- (b) an order of a judge giving unconditional leave to defend an action; or
- (c) the decision of any court or of any judge thereof where it is provided by any Act that there is no right of appeal therefrom.

(2) No appeal shall lie without leave of the court to which the appeal is taken or a judge thereof,

- (a) from an order made with the consent of the parties; or
- (b) where the appeal is only as to costs.

HIGH COURT

Section 27

Every proceeding in the High Court, except as otherwise provided in this Act or by the rules, shall be heard and disposed of by a judge.

Section 28

(1) A judge shall decide all questions coming properly before him, and shall not reserve any case, or any point in a case, for the consideration of the Court of Appeal, except as provided in subsection (2) and (3).

PART I

(2) If a judge considers a decision previously given to be wrong and the question of law involved to be of sufficient importance to be considered in an appellate court, he may refer the case before him to the Court of Appeal after making any necessary findings of fact.

(3) Where a case is so referred, it shall be set down for hearing, and notice of hearing shall be given in like manner as in the case of an appeal to the Court of Appeal.

TRIAL SITTINGS

Section 29

(1) There shall be as many sittings of the High Court in and for every county as are required for the trial of civil proceedings and for the trial of criminal matters.

(2) Separate sittings may be held for the trial of civil proceedings that are to be tried without a jury, and separate sittings for those that are to be tried with a jury, and separate sittings may also be held for the trial of criminal matters.

(3) Sittings may be held concurrently or separately as directed by the Chief Justice of the High Court or by the judge presiding at the sittings.

(4) Subject to the rules, where a sittings is held for the trial of civil proceedings that are to be tried with and for those that are to be tried without a jury, separate lists shall be made and the jury cases shall be first disposed of unless the presiding judge otherwise directs.

PART I

(5) The sittings shall be held in the court house of the county or at such other place in the county as the presiding judge directs.

(6) Subject to the directions of the Chief Justice of the High Court, at least two sittings shall be held each year in and for every county, when necessary, for the due dispatch of business.

(7) All such arrangements as may be necessary or proper for the holding of any sittings of the courts shall be made by the judges of the High Court, with power in the Chief Justice of the High Court to make such re-adjustment or re-assignment as is necessary from time to time.

Section 30

Where the judge whose duty it is to hold a sittings does not arrive in time or is not able to open court on the day appointed for that purpose, the sheriff may, after 4 o'clock in the afternoon of that day, by proclamation, adjourn the sittings to an hour on the following day to be named by him, and so from day to day until the judge arrives or until other directions are received from the judge or from the Chief Justice of the High Court.

Section 31

(1) No sittings shall begin on any day before 9 o'clock in the forenoon; nor, except for special reasons, shall it extend beyond 7 o'clock in the afternoon, and there shall be an intermission of at least one hour at or near noon.

(2) Failure to observe any of the provisions of subsection (1) does not render the trial or other proceeding void.

PART I

MOTIONS COURT

Section 32

At least one judge of the High Court shall sit at Toronto daily, Monday through Friday, in each week for the hearing of motions and applications and, except during July and August, a judge of the High Court shall sit at Ottawa and London at least one day in each alternate week for the hearing of motions and applications.

COUNCIL OF JUDGES

Section 33

(1) A council of the judges of the Supreme Court, of which due notice shall be given to all of them, shall assemble at least once in every year on such day as may be fixed by the Chief Justice of Ontario for the purpose of considering the operation of this Act and of the rules and the working of the offices and the arrangements relative to the duties of the officers of the court, and of inquiring and examining into any defects that appear to exist in the system of procedure or the administration of justice in the Supreme Court or in any other court or by any other authority.

(2) The council shall report to the Attorney General what amendments or alterations, if any, it would be expedient to make in this Act or otherwise relating to the administration of justice, and what other provision, if any, it would be expedient to make for the better administration of justice.

(3) An extraordinary council for the purposes mentioned in subsection (1) may also be convened at any time by the Lieutenant Governor in Council.

PART I

DELEGATION OF POWERS OF JUDGES

Section 34

(1) Where by this or any other Act, any power or authority is conferred upon the judges of the Supreme Court or upon the judges of the High Court as a body, they may respectively delegate such power or authority to a committee of themselves, and when it is exercised by the committee, the acts done by the committee have the same effect as if they had been done by the body by which the committee was appointed.

(2) The presence of a majority of the members of the committee is necessary to constitute a quorum for the transaction of business.

QUORUM OF MEETINGS OF JUDGES

Section 35

Where by this or any other Act any power is conferred on the judges of the Supreme Court or of the High Court, the power may be exercised at a meeting duly called at which, in the case of the Supreme Court, at least seven of the judges are present and, in the case of the High Court, at least five of the judges are present.

ATTENDANCE AT CONFERENCE

Section 36

The Chief Justice of Ontario or the Chief Justice of the High Court may require a judge of the Supreme Court to attend a meeting, conference, or seminar relating to the administration of justice.

PART I

DELAYED DECISIONS

Section 37

(1) Where a judge of the Supreme Court or a county court, a master, local judge or local master has heard a proceeding and dies without delivering judgment, any party may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

(2) Where a judge, master, local judge or local master resigns his office or is appointed to any other court or ceases to hold office by reason of his having reached the age of retirement, he may at any time within three months after such event, give judgment in any proceeding previously tried or heard before him, as if he had not so resigned, been appointed or ceased to hold office.

(3) Where a judge has heard a proceeding jointly with other judges in the Court of Appeal or the Divisional Court, he may at any time within the period mentioned in subsection (2) take part in the giving of judgment by that court as if he were still a member of it.

(4) Where a judge who has heard a proceeding in the Court of Appeal or the Divisional Court is not present when the judgment of the court is delivered, his written judgment may be read by one of the other judges and has the same effect as if he were present.

(5) Where a judge who has heard a proceeding in the Court of Appeal or the Divisional Court is for any reason unable to take part in the giving of judgment, the remaining judges of the court or, if there is a difference of opinion, a majority of them, may give judgment as if such judge were present and taking part in the judgment.

PART I

(6) Where a judge of the Supreme Court fails to deliver judgment within six months from the time the trial or hearing was completed, the Chief Justice of Ontario or the Chief Justice of the High Court, as the case may be, may extend the time for the delivery of such judgment and may, if he thinks it necessary, relieve such judge of his duties until his judgment is delivered. Where the time for delivery of the judgment has been extended and the judge fails to deliver judgment within that time or, if no extension has been granted, the Chief Justice of Ontario or the Chief Justice of the High Court, as the case may be, shall report such failure and the surrounding circumstances to the Canadian Judicial Council and any party to the proceeding may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

(7) Where a county court judge, whether sitting as a county court judge or as a local judge of the High Court, fails to deliver judgment within six months from the time the trial or hearing was completed or, if sitting as a local master fails to deliver his judgment on a motion or application, or his report on a reference within three months from the time the hearing thereon was completed, the Chief Judge of the County and District Courts of Ontario may extend the time for the delivery of such judgment or report and, if he thinks it necessary, may relieve such judge of his duties until his judgment or report is delivered. Where the time for delivery of the judgment or report has been extended and the judge fails to deliver his judgment or report within that time or, if no extension has been granted, the Chief Judge of the County and District Courts of Ontario shall report such failure and the surrounding circumstances to the Canadian Judicial Council and any party to the proceeding may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

PART I

(8) Where a master, or local master who is not a county court judge, has heard a motion, application or reference and fails to deliver his judgment or report within three months from the time the hearing was completed, the Senior Master may extend the time for the delivery of such judgment or report and if he thinks it necessary, relieve such master or local master of his duties until his judgment or report is delivered. Where the time for delivery of the judgment has been extended and the master or local master has failed to deliver judgment within that time or, if no extension has been granted, the Senior Master shall report such failure and the surrounding circumstances to the Judicial Council for Provincial Judges and any party to the proceeding may, upon notice to all other parties, apply for an order directing a re-hearing as provided in subsection (9).

(9) An application for an order directing a re-hearing shall be made to the Chief Justice of Ontario, the Chief Justice of the High Court, the Chief Judge of the County and District Courts of Ontario or the Senior Master, as the case may be, and he may,

- (a) order that the proceeding be restored to the proper list for trial or hearing and, where the original trial or hearing was upon oral evidence, direct that the re-trial or re-hearing shall be upon the transcript of such evidence, or upon such transcript and additional evidence given orally or by affidavit or otherwise as in his opinion the circumstances of the particular case may require;

PART I

- (b) dispose of the costs of the original trial or hearing and the costs of obtaining transcripts of evidence, or may refer the question as to such costs to the judge or officer presiding at the re-trial or re-hearing. No order for a re-trial or re-hearing which includes a direction for the use of transcripts of evidence taken at the original trial or hearing shall be deemed to limit or restrict the power of the judge or officer presiding at such re-trial or re-hearing in his discretion to permit the recalling of any witness called at the original trial or hearing, or to receive other or additional evidence.

RULES OF CIVIL PROCEDURE

Section 38

The rules attached hereto as Schedule "A" are hereby ratified, confirmed and declared to be the Rules of Civil Procedure and shall have the force of law upon and after the coming into force of this Act until varied in accordance with the provisions of this Act.

RULES COMMITTEE

Section 39

- (1) The Rules Committee shall be composed of:
 - (a) the Chief Justice of Ontario, the Chief Justice of the High Court, the Associate Chief Justice of Ontario, the Associate Chief Justice of the High Court and four other judges of the Supreme Court to be appointed by the Chief Justice of Ontario;

PART I

- (b) the Chief Judge of the County and District Courts;
- (c) two county or district court judges to be appointed by the Chief Judge of the County and District Courts;
- (d) the Registrar of the Supreme Court;
- (e) the Attorney General or such law officer of the Crown as he may from time to time appoint;
- (f) the Senior Master;
- (g) four barristers or solicitors to be appointed by the Benchers of the Law Society of Upper Canada in convocation; and
- (h) four other barristers or solicitors to be appointed by the Chief Justice of Ontario.

(2) The Chief Justice of Ontario is the chairman of the Rules Committee; but, in his absence or at his request, the Chief Justice of the High Court shall preside.

(3) The Chief Justice of Ontario and the Chief Justice of the High Court may jointly appoint either the Associate Chief Justice of Ontario or the Associate Chief Justice of the High Court to act as chairman from time to time as set out in the appointment.

(4) Each of the members of the Rules Committee appointed under clause (a), (c), or (g) of subsection (1) shall hold office for a period of three years and is eligible for re-appointment.

PART I

(5) Each of the members of the Rules Committee appointed under clause (h) of subsection (1) shall hold office for a period of one year and is eligible for re-appointment.

(6) In case of the resignation, death or inability to act of any member appointed under clause (a), (c), (g) or (h) of subsection (1), the Chief Justice of Ontario, the Chief Judge of the County and District Courts or Benchers of the Law Society of Upper Canada, as the case may be, may appoint another person similarly qualified to hold office for the unexpired portion of the term of the member who has resigned or died or is unable to act.

(7) A majority of the members of the Rules Committee constitutes a quorum.

(8) The Rules Committee shall hold at least two meetings each year at such time and place as the Chairman may direct.

Section 40

(1) Unless otherwise provided by any statute of the Parliament of Canada and subject to the approval of the Lieutenant Governor in Council, the Rules Committee may, at any time, make rules governing all matters relating to practice and procedure in the Supreme Court and the county courts of Ontario.

(2) Without limiting the generality of the powers conferred by subsection (1), rules relating to the following matters shall be deemed for the purposes of this section to be rules relating to practice and procedure:

- (a) providing for the joinder of claims and parties and for the representation of parties;
- (b) providing for class actions and the remedies available thereunder;

PART I

- (c) providing for the method of commencing proceedings and for the service of process including service out of Ontario;
- (d) providing for the disposition of actions without trial and for the consequences thereof;
- (e) providing for pleadings and for the assertion of claims by way of a counterclaim, cross-claim or third party claim;
- (f) providing for disclosure and discovery before trial and prescribing the scope and the extent thereof;
- (g) providing for the physical and mental examination of parties;
- (h) empowering masters, local judges and local masters to exercise such powers and authority as may be exercised by a judge of the High Court on interlocutory motions and originating applications other than those relating to:
 - (i) the liberty of the subject; or
 - (ii) appeals and applications in the nature of appeals;
- (i) prescribing motions and applications which need not be heard in open court;
- (j) providing for the preservation of the rights of parties pending litigation;

PART I

- (k) regulating the setting down, preparation for and conduct of trials;
- (l) providing for the directing of references and regulating the procedure on references;
- (m) regulating the costs of proceedings;
- (n) providing for the entry and enforcement of judgments;
- (o) prescribing the court to which appeals may be taken, if not inconsistent with this Act or any other Act;
- (p) prescribing the time for and regulating the procedure on appeals, including appeals to the Court of Appeal and to the Divisional Court;
- (q) regulating the procedure in particular types of proceedings including proceedings under any statute that confers jurisdiction upon the court or a judge;
- (r) providing for the separate representation of a child, for mediation and for the assessment of the child and the parties in any proceeding relating to the custody of or access to a child;
- (s) regulating the offices and officers of the court;
- (t) relating to evidence, provided that they do not contravene the express provisions of any statute;

PART I

- (u) relating to the imposition of sanctions for non-compliance with the rules;
- (v) prescribing the discount rate to be used in determining the capitalized value of an award in respect of future damages; and
- (w) providing for arbitration in a proceeding.

(3) Where provisions in respect of practice or procedure are contained in any statute, rules may be made modifying such provisions to any extent that is considered necessary for adapting them to the general practice and procedure of the courts unless that power is expressly excluded.

(4) The power to make rules conferred upon the Rules Committee by this section includes the power to amend or repeal the rules from time to time and to make other rules.

PART II

Section 41

The provisions of this part apply to all courts in so far as the matters to which they relate are cognizable by such courts.

ADMINISTRATION OF LAW AND EQUITY

Section 42

In every civil proceeding, law and equity shall be administered according to the following provisions:

Law and Equity to be Administered Concurrently

- (a) The court shall administer concurrently all rules of law and equity.

Rules of Equity to Prevail

- (b) In all matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

Legal Rights

- (c) Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, the court shall give effect to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or created by any statute.

PART II

Equitable Rights

- (d) Where a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant in the proceeding or to any relief founded upon a legal right which formerly could only have been given by a court of equity, the court shall give to the plaintiff the same relief as ought formerly to have been given by a court of equity in proceedings for the same or like purpose.

Equitable Defences

- (e) Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim asserted by any plaintiff in the proceedings, or alleges any ground of equitable defence to any claim of the plaintiff, the court shall give to every equitable estate, right or ground of relief so claimed, and every equitable defence so alleged, the same effect by way of defence against the claim of the plaintiff as a court of equity ought formerly to have given if the like matters had been relied on by way of defence in any proceeding instituted for the same or like purpose.

Equitable Rights Appearing Incidentally

- (f) The court shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any proceedings.

PART II

Multiplicity of Proceedings to be Avoided

- (g) The court, in the exercise of its jurisdiction in every cause or matter pending before it shall have power to grant and shall grant, either absolutely or on such terms and conditions as it deems just, all such remedies as any of the parties may appear to be entitled to in respect of any legal or equitable claim properly brought forward by them in the cause or matter, so that as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

Section 43

- (1) The court may grant a permanent or interlocutory injunction restraining:
 - (a) the repetition, continuance of, or the threatened or apprehended breach of contract or injury relating to any property or right;
 - (b) the repetition, continuance of, or the threatened or apprehended waste, trespass, nuisance, disturbance, or commission of any tort or other wrongful act;
 - (c) any injury occasioned to a party by the breach of a statute;
 - (d) the threatened or apprehended breach of a provision of any judgment of the court; or
 - (e) in any other case where it is just and equitable.

PART II

(2) Where the court has jurisdiction to grant an injunction, the court may grant a mandatory injunction requiring a party to restore matters to the state which existed prior to the breach of the contract, injury to property or right, the commission of a tort or wrongful act where:

- (a) compensation for the injury cannot be estimated or sufficiently compensated for in damages; or
- (b) it is necessary in the interests of justice to preserve or restore the rights of the parties.

(3) A mandatory injunction may also be granted where it is necessary to compel the performance of a duty created by statute.

DAMAGES IN LIEU OF EQUITABLE RELIEF

Section 44

Where the court has power:

- (a) to grant an injunction against the breach of any covenant, contract or agreement; or
- (b) to order the specific performance of any covenant, contract or agreement,

the court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance.

PART II

INTERLOCUTORY MANDAMUS, INJUNCTION, RECEIVER

Section 45

The court may grant a mandamus or an injunction or appoint a receiver, by an interlocutory order, in all cases in which it appears to the court to be just or convenient so to do. Subject to the rules, any such order may be made either unconditionally or upon such terms and conditions as the court thinks just.

LABOUR DISPUTE

Section 46

(1) In this section, "labour dispute" means a dispute or difference concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(2) Subject to subsection (7), no injunction to restrain a person from any act in connection with a labour dispute shall be granted ex parte.

(3) In every application for an injunction to restrain a person from any act in connection with a labour dispute, the court must be satisfied that reasonable efforts to obtain police assistance, protection and action to prevent or remove any alleged danger of damage to property, injury to persons, obstruction of or interference with lawful entry upon or exit from the premises in question, or breach of the peace have been unsuccessful.

PART II

(4) Subject to subsection (7), evidence in support of an application for an injunction to restrain a person from any act in connection with a labour dispute shall be provided by way of affidavits confined to statements of facts within the knowledge of the deponent, but any party may by notice to the party filing such affidavit, together with the proper conduct money, require the attendance of the deponent to be cross-examined at the hearing of the motion.

(5) An interim injunction to restrain a person from any act in connection with a labour dispute may be granted for a period of not longer than four days and, subject to subsection (7), only after two days notice of the application therefor has been given to the person or persons named in the application.

(6) At least two days notice of an application for an interim injunction to restrain a person from any act in connection with a labour dispute shall be given to the persons affected thereby and not named in the application,

- (a) where such persons are members of a labour organization, by personal service upon an officer or agent of the labour organization; and
- (b) where such persons are not members of a labour organization, by posting the notice in a conspicuous place at the location of the activity sought to be restrained where it can be read by any persons affected,

and service and posting under this subsection shall be deemed to be sufficient notice to all such persons.

PART II

(7) Where notice as required by subsections (5) and (6) is not given, the court may grant an interim injunction where,

- (a) the case is otherwise a proper one for the granting of an interim injunction; and
- (b) notice as required by subsections (5) and (6) could not be given because the delay necessary to do so would result in irreparable damage or injury, a breach of the peace or an interruption in an essential public service; and
- (c) reasonable notification by telephone or otherwise has been given to the persons to be affected or, where any of such persons are members of a labour organization, to an officer of that labour organization or to the person authorized under Section 77 of *The Labour Relations Act*, to accept service of process under that Act on behalf of that labour organization or trade union, or where it is shown that such notice could not have been given; and
- (d) proof of all material facts for the purposes of clauses (a), (b) and (c) is established by viva voce evidence.

(8) The misrepresentation of any fact or the withholding of any qualifying relevant matter, directly or indirectly provided by or on behalf of the applicant for an injunction under this section, constitutes a contempt of court.

(9) Any judgment or order in an application under this section may be appealed to the Court of Appeal.

PART II

OBSCENE PUBLICATIONS

Section 47

(1) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever that publishes continuously or repeatedly writings or articles that are obscene, immoral or otherwise injurious to public morals.

(2) An action may be brought in the Supreme Court by or on behalf of the Attorney General for an injunction or mandamus restraining the publication of any newspaper, publication, pamphlet, magazine, periodical or other printed matter whatsoever containing any writing, article or picture tending to insult, degrade, revile or expose to hatred, contempt or mockery Her Majesty or any member of the Royal Family.

(3) The court may, in addition to making such an order, require the defendant to enter into a recognizance in such sum and during such term as the court requires to carry out the terms of the order and to refrain from the publication of any writing, article or picture of a like nature.

(4) Upon the making of such order, the Attorney General may cause a copy thereof to be served personally upon any person and, if the person after the service publishes any such writing, article or picture, he is liable for contempt to the same extent as if he had been a party to the proceedings.

(5) An action under subsection (1) or (2) may be brought against anyone printing, publishing or distributing any publication of the kind mentioned in subsection (1) or (2).

(6) In an action brought under subsection (1), (2) or (5), the judge may on such material as he sees fit grant an interlocutory injunction or mandamus.

PART II

DECLARATORY JUDGMENTS

Section 48

No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed.

SET OFF

Section 49

(1) Where there are mutual debts between the plaintiff and defendant, or, if either party sue or be sued as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other.

(2) Mutual debts may be set against each other, notwithstanding that such debts are deemed in law to be of a different nature, except where either of the debts accrue by reason of a penalty contained in any bond or specialty.

(3) Where either the debt for which the action is brought or the debt intended to be set against the same has accrued by reason of any such penalty, the debt intended to be set off shall be pleaded and it shall be shown by the pleading how much is truly and justly due on either side, and if the plaintiff recovers in any such action, judgment shall be entered for no more than appears to be truly and justly due to the plaintiff after one debt is set against the other.

(4) If, upon a defence of set off, a larger sum is found to be due from the plaintiff to the defendant than is found to be due from the defendant to the plaintiff, the defendant is entitled to judgment for the balance remaining due to him.

PART II

CERTIFICATE OF PENDING LITIGATION

Section 50

(1) The commencement of a proceeding in which any title to or interest in land is brought in question shall not be deemed notice of the proceeding to any person not a party to it until, where the land is registered under *The Land Titles Act*, a caution is registered under that Act, or in other cases, until a certificate, signed by the registrar of the court, has been registered in the registry office of the registry division in which the land is situate.

(2) The certificate may be in the following form:

*I certify that in a proceeding in the
Court of between A.B., of
and C.D., of some title or interest is
called in question in the following land: (describing it).*

*Dated at this day of
19..*

(3) Subsection (1) does not apply to an action or proceeding for foreclosure or sale upon a registered mortgage or charge, or to enforce a lien under *The Mechanics' Lien Act*.

(4) Any party who registers a certificate or caution referred to in subsection (1) without a reasonable claim to title to or interest in the land is liable for any damages sustained by any person as a result of its registration.

(5) The liability for damages under subsection (4) and the amount thereof may be claimed in the same proceeding or in a separate proceeding.

(6) Where a caution or certificate has been registered and the plaintiff or applicant, at whose instance it was issued, does not in good faith prosecute the proceeding, the court in which the proceeding was commenced may at any time make an order vacating the caution or certificate.

PART II

(7) Where a caution or certificate has been registered and the claim of the plaintiff or applicant is not solely to recover any title to or interest in land but to recover money chargeable on or payable out of land, or some interest in it, or for the payment of which he claims that the land or such interest ought to be subjected, or where the plaintiff or applicant claims any title to or interest in land, and in the alternative, damages or compensation in money, the court in which the proceeding was commenced may at any time make an order vacating the caution or certificate upon such terms as to giving security or otherwise as may seem just.

(8) The court in which the proceeding was commenced may at any time vacate the registration upon such other ground as may seem just.

(9) On a motion under this section, the court may order any of the parties to the proceeding to pay the costs of any of the other parties thereto, or may make any other order with respect to costs that under all the circumstances may seem just.

(10) The order vacating a caution or certificate is subject to appeal, and the order may be registered in the same manner as a judgment affecting land, but the court granting the order may order a stay of the registration pending the disposition of the appeal.

(11) Where a caution or certificate is vacated, and the order vacating it has been registered, any person may deal in respect to the land as fully as if the caution or certificate had not been registered, and it is not incumbent on any purchaser or mortgagee to inquire as to the allegations in the proceeding, and his rights are not affected by his being aware of such allegations.

PART II

INTERIM RECOVERY OF PERSONAL PROPERTY

Section 51

(1) In any action in which the recovery of personal property is claimed, and it is alleged that the property was unlawfully taken from the possession of the plaintiff, or is unlawfully detained by the defendant, the plaintiff may apply to the court for an interim order for its recovery.

(2) Where a plaintiff recovers possession of personal property, pursuant to an interim order under subsection (1), but fails in his action, he is liable to the defendant for any loss sustained by the defendant resulting from the interim recovery of the property.

(3) Where the defendant recovers possession of the property by reason of having the interim order obtained by the plaintiff set aside and the plaintiff succeeds in his action, the defendant is liable to the plaintiff for any loss sustained by the plaintiff resulting from the property having been returned to the possession of the defendant.

(4) The liability for damages under subsection (2) and the amount thereof may be claimed by counterclaim, and the liability for damages under subsection (3) and the amount thereof may be claimed in the action.

(5) Where a sheriff has an interim order for the recovery of personal property and, on reasonable and probable grounds, believes that the property to be recovered, or any part thereof, is located in any building or other enclosure, he may, except on Sunday, enter such building or enclosure by any means necessary for the purpose of recovering the property. Where the building is a dwelling, he may only enter between the hours of 8:00 a.m. and 8:00 p.m.

(6) Where a sheriff has an interim order for the recovery of personal property and, on reasonable and probable grounds, believes that the property is concealed about the person of an individual, he may search the individual, if necessary, for the purpose of recovering the property.

PART II

(7) Any personal property in the possession of a sheriff pursuant to an interim order under subsection (1) shall be at the risk of the plaintiff unless it can be shown that any loss was occasioned by the negligence of the sheriff, his servants or agents.

(8) A plaintiff shall not be entitled to an interim order for the recovery of personal property seized under process by and in the custody of a sheriff, or for the recovery of liquor within the meaning of *The Liquor Control Act* seized under any act of the Legislature.

VESTING ORDERS

Section 52

(1) In every case in which the court has authority to order the execution of a deed, conveyance, contract, transfer or assignment of any property, real or personal, or other document, or the endorsement of any negotiable instrument, the court may by order vest such real or personal property in such person or persons, and in such manner, and for such estates as would be done by any such deed, conveyance, contract, assignment, transfer or endorsement, if executed.

(2) The order shall have the same effect as if the legal or other estate or interest in the property had been actually conveyed by deed or otherwise for the same estate or interest to the person in whom the same is so ordered to be vested or, in the case of a chose in action, as if such chose in action had been actually assigned to such last-mentioned person.

PART II

EXECUTION OF INSTRUMENTS BY ORDER OF THE COURT

Section 53

(1) Where any person neglects or refuses to comply with a judgment directing him to execute any deed, conveyance, contract, transfer or assignment of any property, real or personal, or other document, or to endorse any negotiable instrument, the court may, on such terms and conditions as may be just, order that such deed, conveyance, contract, transfer, assignment, or other document be executed, or that such negotiable instrument be endorsed by such person as the court may nominate for that purpose.

(2) In such case the conveyance, contract, transfer, assignment, document, or instrument, so executed or endorsed shall operate and be for all purposes effective and binding, as if it had been executed or endorsed by the person originally directed to execute or endorse it.

RELIEF AGAINST PENALTIES, ETC .

Section 54

The court shall have the power to relieve against all penalties and forfeitures and, in granting such relief, to impose such terms as to costs, expenses, damages, compensation and all other matters as may seem just.

STAY OF PROCEEDINGS

Section 55

(1) No proceeding in the Supreme Court shall be restrained by prohibition or injunction; but any person affected by an order in any proceeding in any court, whether or not a party to the proceeding may apply to the court in which the proceeding is pending for a stay of proceedings, either generally or so far as may be necessary for the purposes of justice, and the court shall thereupon make such order as may seem just.

PART II

(2) Where a proceeding is brought in any court in Ontario for a cause of action for which a proceeding has been brought and is pending between the same parties or their representatives in any place out of Ontario, the court may make an order staying such proceeding in Ontario until satisfactory proof is offered to the court that the proceeding so brought in such other place out of Ontario is determined or discontinued.

INDEMNITY TO PERSONS ACTING UNDER JUDGMENT

Section 56

Any order or judgment of the court made in any proceeding effectually protects and indemnifies any person acting thereon in good faith.

DEMISE OF CROWN

Section 57

No proceeding in any court shall be discontinued or stayed by reason of the demise of the Crown, but it may be continued as if the demise had not happened.

CONSTITUTIONAL QUESTIONS

Section 58

(1) In any proceeding in which the Attorney General for Canada or the Attorney General for Ontario is a party plaintiff and the other Attorney General is a party defendant, the court has jurisdiction to make a declaration as to the validity in whole or in part of any act of the Legislature or any act of the Parliament of Canada that by its terms purports to have force in Ontario, though no further relief is sought.

PART II

(2) The judgment in any such proceeding is subject to appeal as in ordinary cases.

Section 59

(1) Where in any proceeding the constitutional validity of any act or part of an act of the Parliament of Canada or of the Legislature is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney General for Canada and to the Attorney General for Ontario.

(2) The notice shall state what act or part of an act is in question and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

(3) Subject to the rules, the notice shall be served six days before the day named for the argument.

(4) The Attorney General for Canada and the Attorney General for Ontario are entitled as of right to be heard either in person or by counsel notwithstanding that the Crown is not a party to the proceeding.

(5) Where in a proceeding to which this section applies, the Attorney General for Canada or the Attorney General for Ontario appears in person or by counsel, each shall be deemed to be a party to the proceeding for the purpose of an appeal from any adjudication as to the constitutional validity of any act or part of an act in question in the proceeding and each has the same rights with respect to an appeal as any other party to the proceeding.

PART II

PERPETUATING TESTIMONY

Section 60

(1) Where a person desires to perpetuate the testimony of himself or any other person in respect of any proceeding within the jurisdiction of the court which, for any sufficient reason, he cannot presently bring or cause to be brought, he may make an application to the court, styled in the matter of an intended proceeding, for leave to perpetuate such testimony.

(2) The Notice of Application shall be served on any person the applicant expects will be a party to the proceeding and on any other person whom the court may direct.

(3) The evidence shall be taken in such manner as the court directs and, when taken and transcribed, shall be filed with the court. An order under this section may provide that the examination be recorded by videotape or other similar means either in addition to or in substitution for a typewritten transcript.

INTEREST RATE

Section 61

(1) For the purposes of Sections 62 and 63, there shall be a fixed rate of interest for each quarter of the calendar year to be known as the judicial rate of interest and that rate shall be equivalent to the bank rate, as determined by the Bank of Canada, in effect at the close of business on the first day of the last month of the previous quarter; provided that, where the bank rate is not a whole number, the judicial rate shall be equivalent to the nearest whole number below the bank rate.

(2) The Registrar of the Supreme Court shall, on or before the fifteenth day of the last month of each quarter, ascertain the judicial rate of interest for the next ensuing quarter as provided in subsection (1) and forthwith thereafter publish that rate in the Ontario Gazette as a cumulative schedule to the Ontario Rules of Civil Procedure.

(3) In the absence of publication as provided in subsection (2), the judicial rate of interest for any particular quarter may be proved by affidavit.

PART II

PRE JUDGMENT INTEREST

Section 62

(1) Except as otherwise provided in this section, a person entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon at the judicial rate of interest in effect on the date the proceeding was commenced, which shall be calculated,

- (a) where the judgment is given upon a liquidated claim, from the date the cause of action arose, to the date of the judgment; or
- (b) where the judgment is given upon an unliquidated claim, from the date the person entitled to the judgment gave notice in writing of his claim to the person liable therefor, to the date of the judgment.

(2) Where the judgment awards special damages, interest shall only be awarded on the amount of special damages incurred in each six month period following the notice in writing referred to in clause (b) of subsection (1) and such interest shall be calculated from the end of each six month period to the date of the judgment.

(3) Interest under this section shall not be awarded,

- (a) on exemplary or punitive damages;
- (b) on damages expressly identified by a finding of the court as compensation for pecuniary loss arising after the date of the judgment;
- (c) on interest accruing under this section;

PART II

- (d) on costs awarded in the proceeding; or
- (e) where the judgment is given on consent except by consent of the judgment debtor.

(4) Where, in all the circumstances, it appears just and equitable to do so, the court may, in respect of the whole or any part of the amount for which judgment is given,

- (a) disallow interest under this section;
- (b) allow interest at a rate higher or lower than the judicial rate in effect on the date the proceeding was commenced;
- (c) allow interest to be calculated for a longer or shorter period than that provided for in subsection (1).

(5) Where a person is entitled to have a default judgment upon a liquidated claim signed by an officer of the court and has claimed interest thereon, the judgment shall, subject to the provisions of subsection (6), include interest at the judicial rate in effect on the date the proceeding was commenced and calculated from the date the cause of action arose to the date of judgment.

(6) The foregoing provisions of this section do not apply to a judgment for the payment of money upon which interest is payable as of right, whether by agreement or by law; but such interest, if claimed, shall be included in the judgment, whether obtained on default or otherwise.

PART II

(7) This section applies only to proceedings commenced on or after the date this Act comes into force. Proceedings commenced before the coming into force of this Act shall continue to be governed by the provisions of Section 38, of *The Judicature Act, R.S.O. 1970, c. 228*, as amended, notwithstanding the repeal of that Act.

POST JUDGMENT INTEREST

Section 63

(1) Except as otherwise provided in this section, a judgment for the payment of money shall bear interest from the date of the judgment at the judicial rate of interest in effect at the date of the judgment; notwithstanding that the enforcement of the judgment has been stayed in the meantime by an appeal or otherwise.

(2) Where, by any judgment, a person becomes entitled to the payment of costs, such costs shall bear interest from the date of the judgment at the judicial rate of interest in effect at the date of the judgment whether the costs are fixed by the judgment or referred for taxation.

(3) Where, in all the circumstances, it appears just and equitable to do so, the court may, in respect of the whole or any part of the amount for which judgment is given,

- (a) disallow interest under this section;
- (b) allow interest at a rate higher or lower than the judicial rate in effect at the date of the judgment;
- (c) allow interest from a date subsequent to the date of the judgment.

PART II

(4) No judgment shall bear interest under this section unless the rate of such interest is specified in the judgment or by a subsequent order of the court.

(5) Where a default judgment for the payment of money is signed by an officer of the court, the judgment shall provide for interest under subsection (1) and, if applicable, under subsection (2) from the date of the judgment at the judicial rate in effect at the date of the judgment.

(6) Where a judgment provides for periodic payments, each periodic payment shall bear interest under this section only from the date of default in the payment thereof.

(7) Notwithstanding the foregoing provisions of this section, the judgment of a court in Ontario based upon a foreign judgment, whether by action thereon or by registration, shall only bear interest at the rate expressed in such judgment or applicable to such judgment, if any, by the law of the jurisdiction in which such judgment was given.

(8) This section applies only to the judgment of a court of record in Ontario given on or after the date this Act comes into force. A judgment given before the coming into force of this Act shall continue to be governed by the provisions of Section 40 of *The Judicature Act, R.S.O. 1970, c. 228*, as amended, notwithstanding the repeal of that Act.

PART II

COSTS

Section 64

(1) Subject to the rules of court and the express provisions of any statute, the costs of and incidental to all proceedings authorized to be taken in court or before a judge are in the discretion of the court or judge, and the court or judge has full power to determine by whom and to what extent the costs shall be paid.

(2) Costs of proceedings before judicial officers, unless otherwise disposed of, are in their discretion subject to appeal.

(3) Nothing herein shall deprive a trustee, mortgagee or other person of any right to costs out of a particular estate or fund.

(4) In any proceeding to which Her Majesty is a party, as represented by the Attorney General of Ontario or otherwise, no costs adjudged to Her Majesty shall be disallowed or reduced merely because the solicitor or counsel in respect of whose services the costs are charged was a salaried officer of the Crown or for any other reason not entitled to recover from the Crown any costs in respect of the services so rendered.

(5) Any costs recovered by or on behalf of Her Majesty shall be paid into the Consolidated Revenue Fund.

PART II

TRIAL WITH OR WITHOUT A JURY

Section 65

(1) Any action for libel, slander, malicious arrest, malicious prosecution and false imprisonment shall be tried by a jury unless the parties in person, or by their solicitors, waive such trial. In any such action, the filing and serving of a jury notice shall not be necessary.

(2) An action shall be tried by a judge without a jury where it relates to,

- (a) the administration of the estate of a deceased person;
- (b) the dissolution of a partnership or the taking of a partnership or other accounts;
- (c) the foreclosure or the redemption of a mortgage;
- (d) the sale and distribution of the proceeds of property subject to any lien or charge;
- (e) the execution of a trust;
- (f) the rectification, setting aside or cancellation of a deed or other written instrument;
- (g) the specific performance of a contract;
- (h) the partition or sale of real property;
- (i) the custody or guardianship of a minor or the management of the estate of a minor;
- (j) declaratory relief; or
- (k) any other equitable relief.

(3) Subject to subsections (1) and (2) and any other statute, any action in the Supreme Court or a county court may be tried by a jury where so provided in the rules.

PART II

JURY TRIALS

Section 66

(1) It is sufficient if five of the jurors agree, and a verdict rendered or question answered by five jurors has the same effect as a verdict or answer given by six jurors.

(2) Where more questions than one are submitted, it is not necessary that the same five jurors agree to every answer.

Section 67

If at the trial of an action or issue or assessment of damages a juror dies or becomes incapacitated from any cause from continuing to sit or act on the jury, or if it is discovered that a juror has an interest in the result of the proceeding, or is a relative within the degree of first cousin of any of the parties, the judge may discharge him and direct that the trial or assessment proceed on such terms as he deems just with five jurors, and in that case the verdict or answer to a question given by the jury shall be unanimous.

Section 68

(1) Upon a trial by jury, except in an action for libel, the judge may direct the jury to give a general verdict or may direct the jury to answer any questions specified by him and, when so directed, the jury shall answer such questions and shall not give a general verdict.

(2) In an action, tried by a jury, to which subsection (1) of Section 133 of *The Highway Traffic Act* applies, the judge may direct the jury to specify negligent acts or omissions that caused the damages or injuries in respect of which the action is brought.

PART II

(3) Judgment may be directed to be entered on the answers to such questions.

Section 69

In an action for malicious prosecution, the judge shall decide all questions both of law and fact necessary for determining whether or not there was reasonable and probable cause for the prosecution.

SURETY BONDS

Section 70

(1) In this section *surety company* means a corporation empowered to give bonds by way of indemnity.

(2) The Lieutenant Governor in Council may direct that the bond of a surety company named in the order in council may be given as security in all cases where security is ordered to be given by any court or by any judge or officer of any court and in all cases where security for the cost of an appeal or for the prosecution of the appeal is required by any law, rule or practice.

(3) Every order in council made under subsection (2) shall be published forthwith in The Ontario Gazette and shall be laid before the Assembly within fifteen days after its making if the Assembly is then in session and, if it is not in session, within fifteen days after the opening of the next session.

(4) The bond of a surety company named in the order in council is sufficient without any other surety joining in the bond, and an affidavit of justification is not necessary.

(5) Notwithstanding anything in this section, any judge or any officer having jurisdiction in the matter may in his descretion disallow any such bond on a motion to disallow it, and upon any evidence that is considered sufficient.

PART II

LANGUAGE OF PROCEEDINGS

Section 71

(1) Subject to subsections (2) to (9), writs, pleadings and proceedings in all courts shall be in the English language only, but the proper or known names of writs or other processes, or technical words, may be in the same language as has been commonly used.

(2) The Regional Municipality of Ottawa-Carleton, The United Counties of Prescott and Russell, the United Counties of Stormont, Dundas and Glengarry and the Territorial Districts of Algoma, Cochrane, Nipissing, Sudbury and Timiskaming and such additional counties and districts as are designated by the Lieutenant Governor in Council under subsection (3) are designated counties and districts for the purposes of this section.

(3) The Lieutenant Governor in Council may designate,

(a) counties and districts in addition to those named in subsection (2); and

(b) courts in a designated county or district,

for the purposes of this section.

(4) In a proceeding in a designated court, or in any court to which an appeal therefrom is made, the court shall, upon the application of a party who speaks the French language, direct that the hearing in the proceeding be conducted before a judge who speaks both the English and French languages or, where there is a jury, before a judge and jury who speak both the English and French languages.

(5) Except by leave of the court, an application under subsection (4) shall be made,

PART II

- (a) where the proceeding is in the Supreme Court or a county or district court before the giving of a jury notice or, if none, before the proceeding is set down for trial; or
- (b) where the proceeding is in a court other than the Supreme Court or a county or district court, before the hearing of any evidence in the proceeding.

(6) Where an application is made under subsection (4) and in addition to a direction made thereunder, the court may direct,

- (a) that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually; and
- (b) that subsection (7) apply to oral evidence given in examinations for discovery or in any other pre-hearing stage of the proceeding.

(7) Evidence given in the French language in a proceeding in respect of which a direction is made under this section shall be received and recorded in the French language and shall be transcribed in that language for all purposes.

(8) Any document filed by a party in a proceeding in a small claims court in a designated county or district may be in the French language.

(9) The Lieutenant Governor in Council may make regulations prescribing forms of documents or of parts of documents in both the English and French languages for use in or relating to proceedings in designated courts and requiring their use.

PART II

PROHIBITION AGAINST PHOTOGRAPHING
JUDICIAL PROCEEDINGS

Section 72

- (1) In this section,
 - (a) *judge* means the person presiding at a judicial proceeding;
 - (b) *judicial proceeding* means a proceeding of a court of record;
 - (c) *precincts of the building* means the space enclosed by the walls of the building.
- (2) Subject to subsection (3), no person shall,
 - (a) take or attempt to take any photograph, motion picture or other record capable of producing visual representations by electronic means or otherwise,
 - (i) at a judicial proceeding, or
 - (ii) of any person entering or leaving the room in which the judicial proceeding is to be or has been convened, or
 - (iii) of any person in the precincts of the building in which the judicial proceeding is to be or has been convened where there is reasonable ground for believing that such person is there for the purpose of attending or leaving the proceeding; or
 - (b) publish, broadcast, reproduce or otherwise disseminate any photograph, motion picture or record taken or made in contravention of clause (a).

PART II

(3) Subsection (2) does not apply to any photograph, motion picture or record taken or made upon authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the judicial proceeding;
- (b) in connection with any investive, ceremonial, naturalization or similar proceedings; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as may be approved by the judge.

(4) Every person who is in contravention of this section is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both.

OPEN COURT

Section 73

(1) Every action shall be tried in open court unless the trial judge is satisfied that the possibility of serious prejudice or injustice to the parties or any of them outweighs the desirability of holding the trial in public.

(2) All motions and applications shall be heard in open court except as provided by the rules of court.

PART III

OFFICES AND OFFICERS

Section 74

In addition to the provisions of this Part that are expressly made applicable to all courts or county courts, or are otherwise by their terms so applicable, Sections 90 and 102 apply, with any necessary modification, to the county courts.

Section 75

(1) There shall be such officers of the Supreme Court as are considered necessary by the Lieutenant Governor in Council for the due dispatch of the business of the court, and such officers shall be appointed by the Lieutenant Governor in Council.

(2) The duties of the officers shall be regulated by the rules and by the terms of any order in council governing such officers.

Section 76

(1) Every officer shall, before entering upon the duties of his office, take and subscribe the following oath:

I, of solemnly swear that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfill the duties of the office of without favour or affection, prejudice or partiality to any person. So help me God.

(2) The oath shall be administered by a judge in court.

(3) Where it is not convenient for a person appointed to an office to attend at Toronto to take the oath, it may be taken before a judge of the county court of the county in which the officer resides and, in every such case, the judge shall forthwith transmit the oath to, and it shall be filed in the office of the Registrar of the Supreme Court at Toronto.

PART III

Section 77

With the prior approval of the Attorney General, every local registrar of the Supreme Court, county court clerk and surrogate court registrar may, by writing under his hand and seal of office, appoint a deputy who may perform all the duties required to be performed by the officer making the appointment, and the appointment shall be kept on file in his office.

Section 78

(1) In the event of the death, suspension, resignation, retirement or removal of a local registrar of the Supreme Court, county court clerk or surrogate court registrar, the deputy is the local registrar of the Supreme Court, county court clerk or surrogate court registrar, until the suspension is terminated or another person has been appointed and has assumed the duties of such officer.

(2) In the absence of a deputy, the Attorney General may appoint a temporary deputy.

Section 79

(1) An officer who is paid by salary shall not take for his own benefit, directly or indirectly, any fee or other remuneration except the salary to which he is entitled, and the fees payable in respect of proceedings in his office are payable to the Crown.

(2) Subsection (1) does not apply to the fees of any court reporter who is entitled to take the fees prescribed by order in council.

MASTERS

Section 80

(1) The Lieutenant Governor in Council on the recommendation of the Attorney General may appoint such Masters of the Supreme Court as are considered necessary.

(2) No person shall be appointed a master unless he is a barrister and solicitor of Ontario, of not less than ten years standing.

PART III

(3) The Lieutenant Governor in Council on the recommendation of the Attorney General, may appoint a Senior Master.

(4) The Attorney General may designate a master to act in the place of the Senior Master for all purposes during his illness or absence.

Section 81

The Judicial Council for Provincial Judges established under *The Provincial Courts Act* has the same powers and shall perform the same duties in respect of the appointment of and investigation of complaints against masters as it has or may perform in respect of provincial judges.

Section 82

(1) A master shall retire upon attaining the age of sixty-five years, but may retire at any time after completing ten years in office.

(2) Notwithstanding subsection (1), a master appointed before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years, but may retire at any time after completing ten years in office.

(3) Upon attaining an age for retirement under subsection (1) or (2), a master may be reappointed to hold office during pleasure, but shall not hold office after attaining the age of seventy-five years.

(4) A master may at any time resign his office by a resignation in writing, signed by him and delivered to the Attorney General.

Section 83

(1) A master may be removed from office before attaining retirement age only for misbehaviour or for inability to perform his duties properly and only if,

- (a) the circumstances respecting the misbehaviour or inability are first inquired into; and

PART III

- (b) the master is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

(2) For the purpose of making an inquiry under subsection (1), the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has, for that purpose, the powers of a commission under Part II of *The Public Inquiries Act, 1971*, which part applies to such inquiry as if it were an inquiry under that Act.

(3) An order removing a master from office under this section may be made by the Lieutenant Governor in Council, and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session.

Section 84

(1) The Senior Master shall have general supervision and direction over the administration of the offices of the masters and the assigning of masters for hearings as circumstances may require.

(2) The Senior Master shall also have general supervision and direction over the administration of the offices of the local masters who are not county court judges.

Section 85

(1) The Lieutenant Governor in Council may make regulations,

- (a) fixing the remuneration of masters; and

PART III

(b) providing for the benefits to which masters are entitled, including,

(i) leave of absence and vacations;

(ii) sick leave credits and payments in respect of such credits;

(iii) pension benefits for masters and their widows and surviving children, and for the transfer or other disposition of benefits in respect thereof to which persons appointed as masters under this Act were entitled under *The Public Service Act* or *The Public Service Superannuation Act* at the time of their appointment under this Act.

(2) Subject to subsection (3), unless authorized by the Lieutenant Governor in Council, a master shall not practise or actively engage in any business, trade or occupation, but shall devote his whole time to the performance of his duties as a master.

(3) A master, with the previous consent of the Attorney General, may act as arbitrator or conciliator.

(4) *The Public Authorities Protection Act* applies to masters in the same manner and to the same extent as it applies to justices of the peace, without limiting any other defences available to such officers under the law in respect of acts done in the execution of their duties.

Section 86

(1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such local masters as are considered necessary.

PART III

(2) In the absence or inability to act of a local master appointed under subsection (1), the county court judge may perform the duties and exercise the powers of the local master.

TAXING OFFICERS

Section 87

(1) Every master is ex officio a taxing officer, and every local master who is not a county court judge, local registrar and deputy local registrar is ex officio a local taxing officer.

(2) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such additional taxing officers and local taxing officers as are considered necessary.

(3) The Senior Master shall have general supervision and direction over the administration of the offices of all taxing officers and local taxing officers.

(4) Every taxing officer, for the purpose of taxing costs, shall have the power to administer oaths, take evidence, direct production of documents and give general directions for the conduct of any taxation before him.

LOCAL REGISTRARS

Section 88

(1) The Registrar of the Supreme Court shall have general supervision and direction over every local registrar.

(2) Unless another person is appointed, the clerk of the county court is ex officio local registrar for his county.

COURT REPORTERS

Section 89

(1) Every court reporter is an officer of the court to which he is appointed, and shall perform such duties as are assigned to him by the Lieutenant Governor in Council or by the rules.

PART III

(2) Every court reporter shall take and subscribe the following oath before a judge of the court to which he is appointed, and the oath shall be filed with the local registrar or county court clerk, as the case may be:

I, , solemnly and sincerely promise and swear that I will faithfully report the evidence and proceedings in each case in which I act as court reporter. So help me God.

LOCAL JUDGES OF THE HIGH COURT

Section 90

(1) Every judge of a county court is a local judge of the High Court for the purposes of his jurisdiction in actions in the Supreme Court and may be styled a local judge of the Supreme Court and may exercise all such power and authority in all proceedings in the Supreme Court as he is, by statute or the rules empowered to do.

(2) Where a county court judge is authorized to exercise jurisdiction in a county other than the county for which he is appointed, he has, while exercising jurisdiction in such county, the same power and authority as a local judge of the High Court as though he were a judge of the county court of such county.

(3) Without limiting the generality of subsections (1) and (2), the jurisdiction of a local judge of the High Court extends to the exercising of all such power and authority as may be exercised by the Supreme Court or a judge thereof under the *Divorce Act (Canada)*, and where a claim for any other relief is joined with a petition for divorce, a local judge of the High Court has the same power and authority to deal with such claim as may be exercised by the Supreme Court or a judge thereof.

PART III
SHERIFFS, ETC.

Section 91

Every sheriff, deputy sheriff, jailer, constable and other peace officer shall aid, assist and obey the court and the judges thereof in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever by the rules or by an order of the court or of a judge he is required to do so.

OFFICIAL EXAMINERS

Section 92

(1) Every local registrar of the Supreme Court, deputy registrar and clerk of the county court is ex officio an official examiner for the county for which he is appointed.

(2) The Lieutenant Governor in Council may appoint such additional official examiners as are considered necessary.

(3) An official examiner shall not solicit any party, solicitor or other person to have an official examination taken before him, nor shall any one do so on his behalf with his knowledge or assent, on pain of forfeiture of office.

(4) With the prior approval of the Attorney General, every official examiner may, by writing, appoint a deputy who may perform all the duties required to be performed by the official examiner making the appointment, and the appointment shall be kept on file in his office.

(5) In the event of the death, suspension, resignation, retirement or removal of an official examiner, the deputy official examiner is the official examiner until the suspension is terminated or another person has been appointed and has assumed the duties of such officer.

(6) In the absence of a deputy, the Attorney General may appoint a temporary deputy.

PART III

INSPECTOR OF LEGAL OFFICES

Section 93

(1) The Lieutenant Governor in Council may appoint an officer to be called the Inspector of Legal Offices to inspect all court offices and such other offices connected with the administration of justice as the Lieutenant Governor in Council may direct.

(2) The Lieutenant Governor in Council may appoint an Assistant Inspector of Legal Offices and, in the absence of the Inspector or if the office of Inspector is vacant or if directed by the Inspector, the Assistant Inspector of Legal Offices has the powers and may perform the duties of the Inspector under this or any other Act.

Section 94

(1) The Inspector may inquire into the conduct of any officer, other than a master or local master, in relation to his official duties or acts. He may require such officer or any other person to give evidence before him on oath, and for that purpose he has the same power to summon the officer or other person to attend as a witness, to enforce his attendance and to compel him to produce books and documents and to give evidence, as any court has in civil cases.

(2) Any officer, other than a master or local master, shall, when and as often as required by the Inspector, produce for examination and inspection all books and documents that are required to be kept by them and shall report to the Inspector all such matters relating to any cause or proceeding as the Inspector requires.

PART III

(3) Where books, documents, papers or other material have been preserved in the Supreme Court or in a county or surrogate court for so long that it appears they need not be preserved any longer, an order authorizing the Inspector to cause their destruction or other disposition may be made,

- (a) in the Supreme Court by the Chief Justice of Ontario; and
- (b) in a county or surrogate court, by the Chief Judge of the County and District Courts.

OFFICIAL GUARDIAN

Section 95

(1) The Lieutenant Governor in Council shall appoint a barrister and solicitor of Ontario of not less than ten years standing to be the Official Guardian.

(2) The Lieutenant Governor in Council may appoint one or two similarly qualified persons to act as Deputy Official Guardian, and each Deputy shall have all the powers and may perform any of the duties of the Official Guardian.

(3) In the case of the illness or absence of the Official Guardian, the senior Deputy Official Guardian shall act as Official Guardian and, if the office of the Official Guardian becomes vacant, the senior Deputy Official Guardian shall act as Official Guardian until an Official Guardian is appointed, unless the Attorney General otherwise directs.

PART III

(4) In the case of the illness or absence of the Official Guardian or if the office of the Official Guardian becomes vacant and no Deputy has been appointed, the Attorney General is ex officio Official Guardian until another appointment is made.

(5) The Official Guardian shall represent and protect the rights, interests and welfare of minors, and any other persons under disability, and shall act as litigation guardian for minors and other persons under disability, in accordance with any Act, the rules or any order of a court or judge.

(6) The Official Guardian is entitled to obtain all records and information a parent, guardian or next of kin may obtain.

(7) The Official Guardian shall not be required to give security for costs in any proceeding, nor shall he be liable to be examined for discovery in any proceeding in which he is acting as litigation guardian, but he shall disclose and produce for inspection any relevant document in his possession, custody or control which is not privileged.

(8) The same costs as are payable to counsel and solicitors are payable to the Official Guardian and, unless otherwise ordered, he is entitled to his costs in any event of the cause.

(9) The Official Guardian may act as solicitor or counsel in the discharge of his duties and responsibilities, or he may retain another solicitor or counsel to represent him in any proceeding.

(10) The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Official Guardian.

PART III

(11) Unless the Lieutenant Governor in Council otherwise directs, the Official Guardian or a Deputy Official Guardian shall not directly or indirectly practise the profession of law or act as a notary public or do any conveyancing or prepare any paper or document to be used in any court in Ontario except in the discharge of his duties as Official Guardian or of a duty that is assigned to him under this or any other Act.

(12) It is the duty of the Official Guardian to see that,

- (a) moneys payable on mortgages held by the Accountant, in which persons for whom the Official Guardian has acted are interested, are promptly paid;
- (b) the mortgaged premises are kept properly insured; and
- (c) the taxes thereon are duly paid.

(13) The Official Guardian shall deposit in the Accountant's office a statement showing the distribution of the proceeds of lands sold or mortgaged with his approval under *The Devolution of Estates Act* and the dates of births of minors interested.

(14) All money received by the Official Guardian on behalf of any person for whom he acts shall, unless otherwise ordered, be paid into court to the credit of the person entitled.

(15) Where the amount of money payable into court under this section is ascertained by the deduction of untaxed costs from a fund, the Official Guardian may require such costs to be taxed, and the solicitor who has received such costs shall forthwith pay into court for the person for whom the Official Guardian acts, any balance that is found to be due as a result of such taxation.

PART III

ACCOUNTANT

Section 96

(1) The Accountant of the Supreme Court is a corporation sole by the name of "The Accountant of the Supreme Court of Ontario", and as such corporation has perpetual succession and may sue and be sued and may plead and be impleaded in any of Her Majesty's courts.

(2) All money, mortgages, stocks, securities and property now vested in the Accountant, as such corporation sole, shall continue to be so vested in him, and all money in court and all securities in which money paid into court is invested is vested in him as such corporation sole, subject to this Act.

(3) With the prior approval of the Attorney General, the Accountant may, by writing under his hand and seal of office, appoint a Deputy who may perform all the duties required to be performed by the Accountant, and the appointment shall be kept on file in his office.

(4) In the event of the death, suspension, resignation, retirement or removal of the Accountant, the Deputy is the Accountant until the suspension is terminated or another person has been appointed and has assumed the duties of that office.

(5) In the absence of a Deputy, the Attorney General may appoint a temporary Deputy.

(6) The expenses of the Accountant's office, including all salaries, are payable out of the moneys that are appropriated therefor by the Legislature, and the Lieutenant Governor in Council may provide for payment out of the income from the funds in court.

PART III

(7) All mortgages and other securities taken under an order or judgment of the court and all bonds and other instruments required by the practice of the court for the purpose of security, except security for costs, shall be taken in the name of the Accountant and shall be deposited in his office, unless otherwise ordered.

(8) Mortgages and other securities made to or vested in the Accountant in any proceeding shall be held by him subject to any order of the court, but no duty or liability, except as custodian of the instrument, shall be imposed on the Accountant in respect of such mortgage or security or any property thereby vested in him.

INVESTMENT OF COURT FUNDS

Section 97

(1) The finance committee shall continue to be composed of three persons who shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council and, notwithstanding this or any other Act, the finance committee has the control and management of the money in court and the securities in which it is invested and the investment of such money.

(2) The finance committee may provide for the payment of interest upon any money paid into court and may fix the rate of interest so paid.

(3) The finance committee may establish such reserve funds as it considers expedient in the management of the money in court.

(4) Money paid into court shall be invested in the name of The Accountant of the Supreme Court of Ontario.

(5) Any money that is available for investment shall be invested in investments in which the Treasurer of Ontario and Minister of Treasury, Economics and Intergovernmental Affairs may invest public money under Section 12 of *The Financial Administration Act*.

PART III

(6) The finance committee may employ a trust company to make the investments of money paid into court or as custodian of the securities representing investments of the money, on such terms and conditions as are agreed.

Section 98

All money, securities, effects and real or personal property vested in or held by the Accountant or by the Official Guardian shall be deemed to be vested in them in trust for Her Majesty, but may, nevertheless, be paid out, sold, disposed of, assigned, conveyed or dealt with in accordance with any statute or the rules, or with any judgment or order of the court, or order of the Lieutenant Governor in Council.

Section 99

Where persons who are subjects of a foreign country having a consul in Canada authorized to act as the official representative of such subjects are entitled to moneys that have been paid into court or that are in the hands of an executor or administrator, the moneys may be paid to the consul.

Section 100

The Provincial Auditor shall examine and report upon accounts and financial transactions of The Accountant of the Supreme Court of Ontario.

ACCESS TO BOOKS

Section 101

(1) Any person, upon payment of the prescribed fee, shall have access to, and is entitled to inspect the books of the Supreme Court and of the county courts, containing records or entries of any originating process issued, judgments entered, and chattel mortgages and bills of sale registered, and no person desiring such access or inspection shall be required, as a condition of his right thereto, to furnish the names of the parties or the style of the proceedings in respect of which the access or inspection is sought.

PART III

(2) Any officer having the charge or custody of any such book shall, upon payment of the prescribed fee, produce for inspection any originating process or copy thereof so issued, and any judgment roll, or any chattel mortgage or bill of sale so registered in his office, or of which records or entries are by law required to be kept in such book.

(3) Any person affected by any document in any court is entitled, upon payment of the prescribed fee, to obtain an authenticated or certified copy thereof from the officer having custody of such document.

OATHS AND AFFIDAVITS

Section 102

Every officer of the Supreme Court has, in any proceeding in his court, power to administer oaths and to examine parties and witnesses.

PRISONS OF THE COURT

Section 103

All correctional institutions in Ontario are prisons of the court.

TRANSITIONAL PROVISIONS

Section 104

(1) On the coming into force of this Act, all proceedings, whenever commenced, shall be governed by this Act and the Rules of Civil Procedure, unless the court otherwise orders.

(2) The court may order that a proceeding, or any step therein, be continued and concluded under *The Judicature Act, R.S.O. 1970*, as amended, and the Rules in force at the time the proceeding was commenced.

Section 105

This Act shall come into force on the day of , 19 ..

SCHEDULE "A"
TO THE
PROPOSED REVISION
OF THE
JUDICATURE ACT

PROPOSED RULES OF CIVIL PROCEDURE

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RULES OF CIVIL PROCEDURE

PRELIMINARY MATTERS

RULE 1 CITATION, APPLICATION AND INTERPRETATION

1.01 Citation

These rules may be cited as the Ontario Rules of Civil Procedure.

1.02 Application

These rules apply to all civil proceedings in the Supreme Court of Ontario and in the County and District Courts of Ontario unless by, or pursuant to, any statute some other procedure is provided.

1.03 Interpretation

(1) *The Interpretation Act* and the interpretation section of *The Judicature Act* apply to these rules, except where these rules provide a different definition or a contrary intention appears.

(2) These rules shall be liberally construed to secure the just, least expensive and most expeditious determination of every civil proceeding on its merits.

(3) As to all matters not provided for in these rules, the practice shall be regulated by analogy thereto.

(4) The arrangement of these rules and their title headings are primarily intended for convenience, but may be used to assist in their interpretation.

1.04 Definitions

In these rules, unless the context otherwise requires,

action includes any proceeding other than an application;

appellate court means the Court of Appeal or the Divisional Court, as the case may be;

CITATION, APPLICATION
AND INTERPRETATION

RULE 1

application means an originating application commenced by a Notice of Application;

court means the Supreme Court of Ontario or a county court, as the case may be, in which the proceeding is pending;

defendant means a person against whom an action is commenced and includes a defendant by counterclaim;

deliver or *delivery* means the serving and filing of a document with proof of service; except in the case of an originating process, in which case it means the issuing and serving thereof;

examination for discovery includes an examination by written questions and answers;

holiday means a Saturday, Sunday and any day that is a holiday for civil servants as prescribed by the regulations under *The Public Service Act*;

judge means a judge of the court in which the proceeding is pending but, in a Supreme Court proceeding, does not include a local judge;

judgment includes an order;

local judge means a local judge of the High Court of Justice for Ontario;

motion means an interlocutory motion in a proceeding;

originating process means a document by which any proceeding may be commenced under these rules, and includes a Statement of Claim, a Notice of Action, a Notice of Application, a counterclaim against an added defendant by counterclaim and a Third Party Claim, but does not include a counterclaim against a plaintiff only, a cross-claim or a Notice of Motion;

CITATION, APPLICATION
AND INTERPRETATION

RULE 1

plaintiff means a person who commences an action and includes a plaintiff by counterclaim;

proceeding includes an action and an application;

Registrar means the Registrar of the Supreme Court;

registrar includes the Registrar, a local registrar of the Supreme Court and the Clerk of a county court;

regulation means a regulation as defined by *The Regulations Act*;

statute includes a statute passed by the Parliament of Canada.

1.05 Forms

The forms prescribed in the Appendix of Forms hereto shall be used, where applicable, with such variations as the circumstances of the particular proceeding may require.

PRELIMINARY MATTERS

RULE 2 NON-COMPLIANCE WITH THE RULES

2.01 Waiver of Compliance by the Court

In any particular proceeding, the court may at any time waive compliance with any rule, unless the rule expressly or by necessary implication otherwise provides.

2.02 Effect of Non-Compliance

Any procedural defect, including the failure to comply with these rules or with the procedure prescribed by any statute for the conduct of any proceeding, shall be treated as an irregularity and shall not render the proceeding a nullity, and all necessary amendments or other relief shall be granted at any stage in the proceeding, upon proper terms, to secure the just determination of the real matters in dispute between the parties. In particular, the court shall not set aside any originating process on the ground that the proceeding was required to be commenced by an originating process other than the one employed.

2.03 Attacking the Regularity of Proceedings

A motion to attack any proceeding for irregularity shall be made within a reasonable time, and shall not be allowed if the party applying has taken any further step in the proceeding after having knowledge of the irregularity.

PRELIMINARY MATTERS

RULE 3 TIME

3.01 Computation

Except where a contrary intention appears, in the computation of time under these rules or under any judgment of the court,

- (a) where a number of days is prescribed, they shall be reckoned exclusively of the first day and inclusively of the last day, even if they are expressed to be *clear days* or the words *at least* are used;
- (b) where a period of less than 7 days is prescribed, holidays shall not be counted;
- (c) where the time for doing any act or taking any proceeding expires on a holiday, the act or proceeding may be done or taken on the next day that is not a holiday;
- (d) service of any document, other than an originating process, made after four o'clock in the afternoon or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.

3.02 Extension or Abridgment

(1) Subject to paragraphs (2) and (3), the court may at any time, and from time to time, extend or abridge the time prescribed by any judgment, or by these rules, on such terms as may seem just. An application for extension may be made either before or after the expiration of the time prescribed.

(2) The time prescribed by any judgment granted by a judge may only be extended or abridged by a judge having co-ordinate jurisdiction.

(3) Where the time prescribed by these rules relates to an appeal to an appellate court, only a judge of the appropriate appellate court may make an order under paragraph (1).

TIME

RULE 3

(4) Any time prescribed by these rules for serving, filing or delivering any document may be extended or abridged by consent.

3.03 When Proceedings may be Heard

(1) Proceedings may be heard throughout the year, except that during July and August or from December 24th to the following January 6th, both dates inclusive, no proceeding requiring the attendance of witnesses, other than proceedings for the custody of minors, shall be heard unless all parties consent or the court otherwise orders.

(2) Except for a motion made without notice, no proceeding before a master or other officer shall be heard in the absence of the opposite party until after the expiration of 15 minutes immediately following the time appointed for the hearing thereof.

3.04 Court Office Hours

The offices of the court shall be open for business from 9:30 a.m. to 4:30 p.m. on every day of the year except holidays; provided, however, that the officer in charge may, either before or after those hours, permit the commencement or processing of any proceeding where a limitation period may expire or where the relief sought is of an urgent nature.

PRELIMINARY MATTERS

RULE 4 COURT DOCUMENTS

4.01 Format

Every document in a proceeding shall be printed, type-written, written or reproduced legibly upon one side of good quality paper of approximately 21.5 centimeters by 28 centimeters with a margin of approximately 4 centimeters upon the left-hand side. All such documents shall have a double space between lines.

4.02 Contents

(1) Every document in a proceeding shall contain,

- (a) the name of the court and the court file number;
- (b) the style of cause, but in a document other than an originating process, pleading, affidavit, order, judgment, certificate, report or record, where there are more than two parties to a proceeding, the style of cause may be abbreviated to show the names of the first party on each side followed by the words *and others*;
- (c) the title of the document;
- (d) its date; and
- (e) the name and address of the party delivering the document or his solicitor, if any.

(2) Numbers, including amounts of money, shall be expressed in figures.

4.03 Backsheet

(1) Every document in a proceeding shall have a backsheet, showing on the right-hand side,

- (a) the court file number of the proceeding;
- (b) the name of the court, the judicial district in which the proceeding was commenced and an abbreviated style of cause; and

COURT DOCUMENTS

RULE 4

- (c) the name, address and telephone number of the solicitor for the party delivering the document; and, if the solicitor in the proceeding acts by an agent, the name, address and telephone number of the agent.

(2) Where a party is not represented by a solicitor, the backsheet shall show the name of the party, an address for service within Ontario, and his telephone number.

4.04 Registrar to Issue Copies

On the request of any person affected by any document on the file of the court, and upon payment of the prescribed fee, the registrar shall issue an authenticated or certified copy thereof.

4.05 Notice to be in Writing

Wherever these rules require notice to be given to anyone, such notice shall be given in writing.

4.06 Transcripts

All transcripts of oral evidence to be used in court proceedings shall be prepared as prescribed by regulation pursuant to *The Administration of Justice Act*.

4.07 Affidavits

(1) *Format*

An affidavit used in a proceeding shall be,

- (a) expressed in the first person, and shall state the name in full, place of residence and occupation of the deponent; and, if he is a party or the solicitor, agent or employee of a party, it shall state that fact;
- (b) divided into paragraphs, numbered consecutively, with each paragraph being confined as far as possible to a particular allegation of fact; and
- (c) signed by the deponent and, when the jurat is completed, signed by the person before whom it is sworn.

COURT DOCUMENTS

RULE 4

(2) *Contents*

Every affidavit shall be confined to the statement of facts within the personal knowledge of the deponent, except as otherwise provided in these rules.

(3) *Exhibits*

- (a) An exhibit referred to in an affidavit shall be identified by the person before whom the affidavit is sworn as the exhibit so referred to.
- (b) Where an exhibit is referred to in an affidavit as being attached or annexed to the affidavit, it shall be so attached or annexed and filed with the affidavit.
- (c) Where an exhibit is referred to in an affidavit as being produced and shown to the deponent, it shall not be attached or annexed to the affidavit or filed therewith, but shall be left with the registrar for the use of the court. Upon the disposition of the proceeding, or of the motion in the proceeding, in respect of which the affidavit was filed, any such exhibit shall be returned to the party who filed the affidavit or his solicitor, unless otherwise ordered.
- (d) A copy of every documentary exhibit referred to in an affidavit shall be served with the affidavit, unless it is impractical to do so.

(4) *By Two or More Deponents*

Where an affidavit is made by two or more deponents, there shall be a separate jurat for each deponent, unless all the deponents are sworn before the same person at the same time when the words *above-named deponents* may be used.

(5) *On Behalf of a Corporation*

Any affidavit may be made on behalf of a corporation by any officer, director or employee thereof.

COURT DOCUMENTS

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(6) *On Behalf of a Partnership*

An affidavit may be made on behalf of a partnership by any member of the partnership, or by any employee thereof.

(7) *By an Illiterate or Blind Person*

Where it appears to a person before whom an affidavit is sworn that the deponent is illiterate or blind, he shall certify in the jurat that the affidavit was read in his presence to the deponent who appeared to understand it, and that the deponent signed the affidavit or placed his mark on it in his presence.

(8) *By a Person who does not Understand the Language*

Where it appears to a person before whom an affidavit is sworn that the deponent does not understand the language used in the affidavit, he shall certify in the jurat that the affidavit was interpreted to the deponent in his presence by a named interpreter sworn by him to interpret the affidavit correctly.

(9) *Alterations*

Any interlineation, erasure or other alteration in an affidavit shall be initialled by the person before whom the affidavit is sworn and, unless so initialled, the affidavit shall not be used without leave of the judge or officer hearing the proceeding.

(10) *Proof of Signature*

An affidavit, purporting to be signed by a person authorized to administer oaths in or out of Ontario, shall be admitted in evidence without proof of the signature of that person.

COURT DOCUMENTS

RULE 4

4.08 Issuing and Filing of Documents

(1) An originating process may only be issued upon personal attendance in the court office of the party or someone on his behalf.

(2) Except where filed in the course of a trial or hearing or where otherwise provided in these rules, all documents shall be filed in the court office in which the proceeding was commenced.

(3) Where a motion is being brought in a place other than where the proceeding was commenced, any document to be used on the motion may be filed in the court office at the place of hearing and upon the disposition of the motion shall be returned by the registrar to the court office where the proceeding was commenced.

(4) Any document, other than an originating process, may be filed by leaving it in the proper court office or by mailing it to the proper court office accompanied by the prescribed fee, where a fee is required.

(5) The date of filing of any document received by a court office through the mail shall be deemed to be the date which appears in the official filing stamp of the court office stamped upon the document.

(6) Where a court office has no record of the receipt of any document alleged to have been filed by mailing, the document shall not be treated as filed, unless otherwise ordered.

COURT DOCUMENTS

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4.09 Trial Record

(1) The record to be filed when an action is set down for trial shall contain,

- (a) a copy of any Jury Notice;
- (b) a copy of the pleadings, including those relating to any counterclaim or cross-claim;
- (c) a copy of any demand or order for particulars and the particulars delivered pursuant thereto; and
- (d) a memorandum signed by the registrar stating that,
 - (i) the record contains a copy of all pleadings in the action and all particulars ordered to be delivered therein and that the time for delivery of any pleadings has expired;
 - (ii) any defendant who has failed to deliver a Statement of Defence has been noted in default; and
 - (iii) where applicable, judgment has been obtained, or the action has been discontinued or dismissed, as against any defendant, as the case may be.

(2) There shall be attached to the record a copy of,

- (a) any order respecting the trial;
- (b) any memorandum signed by counsel or order by the court following a pre-trial conference; and
- (c) in an undefended action, any affidavit to be used in evidence.

PARTIES AND JOINDER

RULE 5 JOINDER OF CLAIMS AND PARTIES

5.01 Joinder of Claims

(1) A plaintiff or applicant may join in the same proceeding any claims he has against an opposite party, whether or not they are being made in the same or different capacities.

(2) It is not necessary that every defendant or respondent be interested in all the relief claimed or in every claim included in any proceeding.

5.02 Joinder of Necessary Parties

(1) A plaintiff or applicant who claims relief to which any other person is jointly entitled shall join as parties to the proceeding all parties so entitled.

(2) Every person shall be joined as a party to a proceeding whose presence is necessary to enable the court to effectively and completely adjudicate upon the issues or questions involved in the proceeding.

(3) Any such person who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

(4) The court, in its discretion, may relieve against the necessity for the joinder of any such person.

5.03 Permissive Joinder of Parties

(1) *Multiple Plaintiffs*

Persons may be joined as plaintiffs or applicants, provided they are represented in the proceeding by the same solicitor, where,

JOINDER OF CLAIMS AND PARTIES

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- (a) they assert any rights to relief (whether jointly, severally, or in the alternative) in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences;
- (b) any common question of law or fact may arise in the proceeding; or
- (c) it appears that their presence in the proceeding may promote the convenient administration of justice.

(2) *Multiple Defendants*

Persons may be joined as defendants or respondents where,

- (a) there is asserted against them (whether jointly, severally, or in the alternative) any rights to relief arising out of the same transaction, occurrence, or series of transactions or occurrences;
- (b) any common question of law or fact may arise in the proceeding;
- (c) there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief;
- (d) damage or loss has been caused to the same plaintiff or applicant by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff or applicant, and there is doubt as to the person or persons from whom he is entitled to relief or the respective amounts for which each may be liable; or
- (e) it appears that their presence in the proceeding may promote the convenient administration of justice.

JOINDER OF CLAIMS AND PARTIES

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5.04 Misjoinder and Non-Joinder

(1) No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the court may, in any proceeding, determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceeding and pronounce judgment without prejudice to the rights of all persons who are not parties.

(2) At any stage of a proceeding the court may grant leave to add, delete or substitute any party and such leave shall be given, on such terms as may seem just, unless prejudice will result which cannot be compensated for by costs or an adjournment.

(3) No person shall be added as a plaintiff or applicant without filing his consent in writing.

5.05 Relief Against Joinder

Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the trial, or cause undue prejudice to any party, the court may,

- (a) order separate trials;
- (b) require one or more of such claims to be asserted, if at all, in another proceeding;
- (c) order that any party be compensated for being required to attend, or be relieved from attending, any part of a trial in which he has no interest;

JOINDER OF CLAIMS AND PARTIES RULE 5

- (d) dismiss the proceeding against any defendant, without prejudice to the right of the plaintiff to assert the same claims against the defendant in a subsequent proceeding, on condition that such defendant be bound by the determination of the issues in the original proceeding; or
- (e) make such other order as may seem just.

PARTIES AND JOINDER

RULE 6 CONSOLIDATION OR TRIAL TOGETHER

6.01 Where Actions in Same Court

(1) Where two or more actions are pending in the same court, and it appears to the court that,

- (a) some common question of law or fact arises in both or all of them;
- (b) the rights to relief claimed therein are in respect of, or arise out of, the same transaction, occurrence or series of transactions or occurrences; or
- (c) for any other reason it is desirable to make an order under this rule;

the court may order the actions to be consolidated, or to be tried at the same time, or one immediately after the other, or may order any of them to be stayed until after the determination of any other of them, on such terms as may seem just.

(2) In any such order, the court may give such directions as may tend to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of trial and abridge the time for placing an action on the list for trial.

(3) An order for the trial together of two or more actions, or for the trial of one immediately after the other, shall be subject to the discretion of the trial judge.

6.02 Where Actions in Different Courts

(1) Where the actions in question are pending in the Supreme Court and in one or more county courts, an order under Rule 6.01 may be made on motion to a judge of the Supreme Court and any such order may transfer any action affected by the order to another court. Thereafter, any such action shall be styled in the court to which the action is transferred and shall be proceeded with as if it had been commenced in that court.

(2) Where the actions in question are pending in two or more county courts, such an order may be made by the Chief Judge of the County and District Courts of Ontario or by a master at Toronto.

PARTIES AND JOINDER

RULE 7 PARTIES UNDER DISABILITY

7.01 Representation

Unless otherwise ordered or provided by any statute, a proceeding shall be commenced, continued or defended in the case of,

- (a) a minor, by a litigation guardian;
- (b) a person who has been declared mentally incompetent or incapable of managing his own affairs, by the committee of his estate, or where there is no such committee, by the committee of his person;
- (c) a person who is mentally incompetent or incapable of managing his own affairs, not so declared, by his committee if there is one, or if not, by a litigation guardian;
- (d) a person who has been declared an absentee, by his committee if one has been appointed, or if not, by the Public Trustee.

[Note: See s.7(4) of the Motor Vehicle Accident Claims Act where the defendant is an infant]

7.02 Litigation Guardian for Plaintiff or Applicant

(1) Any person, not under disability, may act as litigation guardian for a plaintiff or applicant who is under disability without being appointed by the court.

(2) No person except the Official Guardian or the Public Trustee shall commence to act as litigation guardian for a plaintiff or applicant who is under disability until he has filed an affidavit in which he,

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- (a) consents to act in that capacity;
- (b) confirms that he has given written authority to a solicitor to act and specifies the name of that solicitor;
- (c) sets out his place of residence and that of the person under disability;
- (d) sets out his relationship, if any, to the person under disability;
- (e) states that he has no interest in the proceeding adverse to that of the person under disability; and
- (f) acknowledges that he has been informed of his liability to pay personally any costs awarded against him or against the party under disability.

7.03 Litigation Guardian for Defendant or Respondent

(1) Unless otherwise ordered, the Official Guardian shall act as the litigation guardian of a defendant or respondent where the proceeding is against a minor, in respect of his interest in an estate or trust.

(2) Except as provided in paragraph (1), no person shall act as a litigation guardian for a defendant or respondent who is under disability until he has been appointed by the court.

(3) Where a person under disability has been served with an originating process as provided by these rules and has failed to deliver a defence by his committee or litigation guardian or to apply for the appointment of a litigation guardian within the time limited for the delivery of his defence, the plaintiff or applicant, before continuing a proceeding shall apply for an order from the court appointing a litigation guardian for the person under disability on notice to such person.

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(4) A motion for the appointment of a litigation guardian may be made without notice to the person under disability where a Request for Appointment of Litigation Guardian (Form 7A) was served with the originating process on the person under disability.

(5) Where the plaintiff or applicant intends to apply for the appointment of the Official Guardian or the Public Trustee as litigation guardian for the person under disability, a Request for Appointment of Litigation Guardian shall be served on the person under disability not less than 10 days before applying for such appointment.

(6) Where it is sought to appoint the Official Guardian or the Public Trustee as the litigation guardian, the Notice of Motion shall be served on him together with proof of service of the originating process and either the Notice of Motion or a Request for Appointment of Litigation Guardian, as the case may be, on the person under disability.

(7) On a motion for the appointment of a litigation guardian, there shall be affidavit or other evidence as to,

- (a) the nature of the proceeding;
- (b) the date on which the cause of action arose;
- (c) the date on which the proceeding was commenced and the date of service of the originating process;
- (d) the nature and extent of the disability;
- (e) in the case of a minor, the date of birth;
- (f) the place of residence of the person under disability and that of the proposed litigation guardian, unless he is the Official Guardian or the Public Trustee;
- (g) the relationship, if any, of the proposed litigation guardian to the person under disability; and

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- (h) except where it is sought to have the Official Guardian or the Public Trustee appointed, the fact that the proposed litigation guardian,
 - (i) consents to act in that capacity;
 - (ii) is a proper person to be appointed; and
 - (iii) has no interest in the proceedings adverse to the person under disability.

7.04 Appointment of Official Guardian or Public Trustee

Unless there is some other fit and proper person willing and able to act as litigation guardian, the court shall appoint,

- (a) the Official Guardian where the person under disability is a minor;
- (b) the Public Trustee where the person under disability is mentally incompetent or is incapable of managing his own affairs, not so declared, and has no committee;
- (c) either the Official Guardian or the Public Trustee where the person under disability is a minor and is also mentally incompetent or incapable of managing his own affairs, not so declared, and has no committee.

7.05 Powers and Duties of Litigation Guardian

(1) Where a party is under disability, anything that is required or authorized by these rules to be done by a party in a proceeding may be done on his behalf by his litigation guardian.

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(2) A litigation guardian shall diligently attend to the interests of the person under disability and take all proceedings that may be necessary for the protection of his interests, including proceedings by way of counterclaim, cross-claim or third party claim and, notwithstanding the provisions of Rule 7.03 (2), a litigation guardian for a plaintiff may defend a counterclaim.

(3) A litigation guardian shall act through a solicitor and shall instruct that solicitor in the conduct of the proceeding; however, where the litigation guardian is the Official Guardian or the Public Trustee he need not act through another solicitor.

7.06 Removal or Substitution of Litigation Guardian

(1) Where, in the course of any proceeding,

- (a) a minor, for whom a litigation guardian has been acting, comes of age, the minor or his litigation guardian may, on filing an affidavit verifying those facts, obtain from the registrar an Order to Continue (Form 7B) authorizing the minor to continue the proceeding without the litigation guardian;
- (b) a party under any other disability, for whom a litigation guardian has been acting, ceases to be under such disability, such party or his litigation guardian may apply to the court without notice to any of the other parties to the proceeding for an order to continue the proceeding without the litigation guardian.

(2) Where, at any time, it appears to the court that a litigation guardian is not acting in the best interests of the person under disability, the court may substitute the Official Guardian, the Public Trustee or any other person as a litigation guardian upon such terms and conditions as may seem just.

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7.07 Approval of Settlement or Compromise

(1) No settlement or compromise of any claim made by or on behalf of a person under disability, whether or not any proceeding has been commenced in respect of that claim, is binding upon him and no judgment may be obtained against him by default or on consent without the approval of a judge.

(2) The approval of a judge under paragraph (1) is not required where the Public Trustee is the committee of the estate of the person under disability, except where the Public Trustee has been so appointed pursuant to the provisions of *The Mental Incompetency Act*.

(3) Where an agreement for the settlement or compromise of any claim made by or on behalf of a person under disability is reached before a proceeding has been commenced in respect of that claim, the approval of a judge shall be obtained on an application.

(4) Unless a judge otherwise orders, notice of any motion or application for the approval of a judge under this rule shall be served on the Official Guardian, unless the Public Trustee has been appointed committee of the estate of the person under disability pursuant to the provisions of *The Mental Incompetency Act*, in which case such notice shall be served on him.

(5) On a motion or application for the approval of a judge under this rule, the following shall be served and filed with the Notice of Motion or Notice of Application, as the case may be,

- (a) an affidavit of the committee or litigation guardian as to his position in respect of the proposed settlement or compromise;

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- (b) an affidavit of the solicitor or counsel acting for the committee or litigation guardian as to his recommendation in respect of the proposed settlement or compromise;
- (c) where the person under disability is a minor who is over the age of 16 years, his consent in writing; and
- (d) a copy of the proposed minutes of settlement or consent to dismissal.

(6) Any monies payable to a person under disability, pursuant to any settlement or compromise of a claim made by or on behalf of a person under disability for which the approval of a judge is required under this rule, shall be paid into court to his credit, except to the extent that such monies represent special damages, in which case the judge approving such settlement or compromise may otherwise direct.

PARTIES AND JOINDER

RULE 8 PARTNERSHIPS AND SOLE PROPRIETORSHIPS

8.01 Partnerships

(1) Any proceeding by or against two or more persons, as partners, may be commenced in the firm name of the partnership of which they were partners carrying on business at the time the cause of action arose.

(2) This rule applies to a proceeding between a partnership and one or more of its partners, and to a proceeding between partnerships having one or more partners in common.

8.02 Defence

Where a proceeding is commenced against a partnership in the firm name, the partners and the partnership shall deliver a common defence in the name of the firm, and no person who admits he was a partner at any material time may defend in his own name, except by leave of the court.

8.03 Notice to Person Alleged to be a Partner

(1) In a proceeding against a partnership in the firm name, no person, other than a named party, shall be held personally liable as a partner unless he has been served with the originating process, together with a Notice to Alleged Partner (Form 8A) informing him that he is alleged to be a partner.

(2) Any person served as provided in paragraph (1) shall be deemed to be a partner at all material times, unless he defends the proceeding in his own name denying that he was a partner at any material time, in which case he may also defend the proceeding on the merits.

(3) Where a person defends a proceeding in his own name pursuant to this sub-rule, or by leave of the court, he shall thereupon become a party to the proceeding as a defendant or respondent, and thereafter the style of cause shall be amended accordingly.

**PARTNERSHIPS AND
SOLE PROPRIETORSHIPS**

RULE 8

8.04 Disclosure of Partners

(1) Where a proceeding is commenced by or against a partnership in the firm name, any other party may, at any time, serve a notice requiring the partnership to forthwith disclose in writing the names of all the partners constituting the partnership at the time the cause of action arose and their present place of residence. Where the present place of residence of any such partner is unknown, the partnership shall disclose the last known address of that partner.

(2) Where any partnership fails to comply with any such notice, any claim or defence as against the party who served the notice may be dismissed or struck out, as the case may be, or the proceeding may be stayed.

(3) Where the name of a partner is disclosed pursuant to a notice under paragraph (1) and that partner has not been served as provided in Rule 8.03, he may be so served within 15 days of the receipt of such disclosure.

8.05 Enforcement of Judgment

(1) A judgment against a partnership in the name of the firm may be enforced against the property of the partnership.

(2) A judgment against a partnership in the name of the firm, with leave of a judge, may also be enforced against any person who was served as provided in Rule 8.03 and who,

(a) by that rule, is deemed to be a partner;

(b) has admitted that he is a partner; or

(c) has been adjudged to be a partner.

(3) Where, subsequent to the granting of any such judgment, the party obtaining it claims to be entitled to enforce it against any other person alleged to be a partner, he may apply to a judge for leave to do so, and the judge may grant such leave if the liability is not disputed; or, if disputed, after such liability has been determined in such manner as the judge may direct.

**PARTNERSHIPS AND
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8.06 Sole Proprietorships

(1) Where a person carries on business in a business style other than his own name, any proceeding may be commenced by or against him in his business style.

(2) Insofar as they are applicable, all the provisions of this rule, with any necessary modifications, shall apply to a proceeding by or against a sole proprietor in his business style as though the sole proprietor were a partner and his business style were the firm name of a partnership.

PARTIES AND JOINDER

RULE 9 UNINCORPORATED ASSOCIATIONS

9.01 Definition

For the purpose of this rule, *association* means an unincorporated organization of two or more persons, other than a partnership, operating under the name of the association for a common purpose or undertaking and includes any club, society, fraternity or syndicate, but does not include a trade union or an employer's organization as defined by *The Labour Relations Act*.

9.02 Proceeding by or Against an Association

Any proceeding may be brought by or against any association in the name of the association, whether or not the association is possessed of a trust fund.

9.03 Effect of Judgment Against an Association

(1) Any judgment against an association may be enforced against the property of the association, including property held in trust for the association.

(2) No member of an association shall be personally liable for the payment of any money under a judgment against the association unless he is a party to the proceeding and has been held to be personally liable for all or part of that judgment.

(3) An injunction or mandatory order against an association may, by leave of a judge, be enforced against any officer or member of the association.

PARTIES AND JOINDER

RULE 10 ESTATES AND TRUSTS

10.01 Proceedings by or against an Estate or Trust where there is a Personal Representative or Trustee

(1) Any proceeding may be brought by or against an executor, administrator or trustee as representing the estate or trust of which he is the personal representative or trustee and as representing the persons beneficially interested therein without joining such persons as parties thereto.

(2) Paragraph (1) does not apply to any proceeding,

(a) to establish or contest the validity of a will;

(b) to remove an executor, administrator or a trustee;

(c) against an executor, administrator or trustee for fraud or maladministration; or

(d) for the administration of an estate, or for the execution of a trust by the court.

(3) Where proceedings are commenced by executors, administrators or trustees, any executor, administrator or trustee who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

(4) Nevertheless, the court may, at any time, order that any beneficiary, creditor or other interested person be made a party to a proceeding by or against a personal representative or trustee.

10.02 Proceedings against an Estate where there is No Personal Representative

(1) Where it appears that a deceased person has no personal representative, and a proceeding is sought to be commenced or continued against his estate, the court may, on motion, appoint a litigation administrator to represent the estate for the purposes of the proceeding.

ESTATES AND TRUSTS

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(2) Before making an order appointing a litigation administrator, the court may require notice to be given to any insurer of the deceased person who has an interest in the proceeding, to the Superintendent of Insurance where the proceeding may impose liability on the Motor Vehicle Accident Claims Fund, and to any other person who may have an interest in the estate.

[Note: *See The Motor Vehicle Accident Claims Act, R.S.O. 1970, c. 281, s. 7(5)*]

(3) Any judgment in a proceeding to which a litigation administrator is a party shall bind the estate of the deceased person, but shall have no effect whatsoever against the litigation administrator in his personal capacity, unless a judge otherwise orders.

[Note: *As to parties to mortgage actions where there is no personal representative, see The Devolution of Estates Act, R.S.O. 1970, c. 129, s. 9*]

10.03 Remedial Provisions

(1) *Proceedings Commenced before Probate or Administration*

Where a proceeding is commenced by or against a person as executor or administrator before any grant of probate or administration has been made, a subsequent grant of probate or administration shall relate back to the commencement of the proceedings.

(2) *Proceedings Brought by or against the Estate*

No proceeding commenced by or against the estate of a deceased person by naming *the estate of A.B., deceased* or *the personal representative of A.B., deceased* or any similar style of cause, or any proceeding where the wrong person is named as the personal representative, shall be treated as a nullity; but the court may make an order that the proceeding be continued by or against the proper personal representative of the deceased or against a litigation administrator appointed for the purpose of the proceeding, and the style of cause shall be amended accordingly.

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(3) *Proceedings Commenced in the Name of or Against a Deceased Person*

No proceeding commenced in the name of or against a person who has died prior to the commencement thereof shall be treated as a nullity, but the court may make an order that the proceeding be continued by or against his personal representative or a litigation administrator appointed for the purpose of the proceeding and the style of cause shall be amended accordingly.

(4) *Where There is a Personal Representative and a Litigation Administrator has been Appointed*

Where it appears that a deceased person, for whom a litigation administrator has been appointed, had a personal representative at the time of the appointment, the appointment shall not be treated as a nullity, but the court may make an order that the proceeding be continued against the personal representative and the style of cause shall be amended accordingly.

(5) *Stay of Proceedings until Properly Constituted*

No further step in any proceeding referred to in paragraphs (2), (3) and (4) shall be taken until it is properly constituted and, unless it is properly constituted within a reasonable time, the court may dismiss the proceeding or make such other order as may seem just.

(6) *Terms May Be Imposed*

Upon making an order under this rule, the court may impose such terms and conditions as may seem just, including a term that an executor or an administrator shall not be personally liable in respect of any part of the estate of a deceased person that he has distributed or otherwise dealt with in good faith, while not aware that a proceeding had been commenced against the estate.

ESTATES AND TRUSTS

RULE 10

(7) *General Power*

No proceeding by or against a deceased person or his estate shall be treated as a nullity because it was not properly constituted, but may be reconstituted by the court by analogy to the provisions of this rule, and this rule shall not be construed in any way as to limit the generality of Rule 2.02.

PARTIES AND JOINDER

RULE 11 REPRESENTATION ORDER

11.01 Representation of an Interested Person who Cannot be Ascertained

- (1) In a proceeding concerning,
 - (a) the interpretation of a deed, will, contract or other instrument or the interpretation of any statute, order-in-council, regulation, municipal by-law or resolution;
 - (b) the determination of any question arising in the administration of an estate or trust ;
 - (c) the approval of any sale, purchase, compromise or other transaction;
 - (d) the approval of an arrangement under *The Variation of Trusts Act*;
 - (e) the administration of the estate of a deceased person; or
 - (f) any other matter where it may seem necessary or desirable,

a judge may appoint one or more persons to represent any person, including any unborn or unascertained person, or the members of a class of persons who have a present, future, contingent or unascertained interest in, or who may be affected by the proceeding and who cannot be readily ascertained, found or served.

(2) Where any appointment is made under paragraph (1), any judgment in the proceeding is binding upon a person or class so represented, unless a judge otherwise orders in the same or any subsequent proceeding.

REPRESENTATION ORDER

RULE 11

(3) Where, in a proceeding under paragraph (1), a compromise is proposed, and any person or member of the class represented in the proceeding is not a party, a judge, if satisfied that the compromise will be for the benefit of that person or member of the class and that it is expedient to exercise the power, may approve of the compromise and order that it shall be binding on that person or member of the class and, unless the order has been obtained by fraud or non-disclosure of material facts, that person or member of the class shall be bound accordingly.

11.02 Representation of a Deceased Person

Where it appears to a judge that a deceased person has an interest in a matter in question in the proceeding and has no personal representative, the judge may proceed in the absence of a person representing the estate of the deceased person or appoint a person to represent the estate for the purposes of the proceeding, and any judgment in the proceeding shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceeding.

PARTIES AND JOINDER

RULE 12 JOINDER OF ASSIGNOR

12.01 Where Assignor is a Necessary Party

In a proceeding by the assignee of a debt or other *choses in action*, the assignor shall be joined as a party unless,

- (a) the assignment is absolute and not by way of charge only; and
- (b) notice in writing has been given to the person liable in respect of the debt or *choses in action* that an assignment thereof has been made in favour of the assignee.

12.02 Assignor Made Defendant

Where the assignor is a necessary party and does not consent to being joined as a plaintiff or applicant, he shall be made a defendant or respondent unless the court otherwise orders.

PARTIES AND JOINDER

RULE 13 TRANSFER OR TRANSMISSION OF INTEREST

13.01 Effect of Transfer or Transmission

Where at any stage of a proceeding, the interest or liability of any party is transferred or transmitted to some other person, the proceeding shall be stayed until an order to continue the proceeding against such other person has been obtained.

13.02 Order to Continue

(1) Where a transfer or transmission of the interest or liability of any party has taken place while a proceeding is pending, the party having the carriage of a proceeding may, on filing an affidavit verifying those facts, obtain from the registrar an Order to Continue (Form 13A), without notice to any of the other parties to the proceeding.

(2) Where the party having carriage of the proceeding fails to obtain such an order within 30 days after such transfer or transmission has taken place, any other interested party may do so.

13.03 Application to Vary or Discharge Order

Any person made a party to a proceeding by an order to continue may apply to the court to vary or discharge the order within 10 days from the day it was served upon him.

PARTIES AND JOINDER

RULE 14 CLASS ACTIONS

14.01 Where Available

Where there are numerous persons having the same interest, one or more may bring or defend a proceeding on behalf of, or for the benefit of, all, or may be authorized by the court to do so.

PARTIES AND JOINDER

RULE 15 INTERVENTION

15.01 Leave to Intervene as Added Party

(1) Where any person, who is not a party to a proceeding, claims an interest in the subject matter of the proceeding or that he may be adversely affected by a judgment in the proceeding or that there exists between himself and one or more of the parties to the proceeding a question of law or fact in common with one or more of the questions in issue in the proceeding, he may apply to the court for leave to intervene therein as an added party.

(2) On any such motion, the court shall consider whether or not the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add such person as a party to the proceeding and may make such order as to pleadings, production and discovery and impose such conditions as to costs or otherwise as may seem just.

15.02 Leave to Intervene Without Being Added

Any person may, with leave of the court and without becoming a party to the proceeding, intervene therein as a friend of the court for the purpose of rendering assistance to the court by way of argument.

COMMENCEMENT OF PROCEEDINGS

RULE 16 ORIGINATING PROCESS

16.01 How Proceedings Commenced

Unless otherwise provided by any statute, all civil proceedings, except a counterclaim against a plaintiff only or a cross-claim, shall be commenced by the issuing of an originating process by the registrar of the court in which the proceeding is to be commenced.

16.02 Where Leave Required

Where leave to commence a proceeding is required, the application for leave shall be treated as if it were a motion in a proceeding and, unless otherwise provided by any statute, may be made to the court.

16.03 By Statement of Claim or Notice of Action

(1) Unless otherwise provided by these rules, the originating process for the commencing of any proceeding shall be a Statement of Claim (Form 16A).

(2) Where there is insufficient time to prepare a Statement of Claim, an action may be commenced by the issuing of a Notice of Action (Form 16B) upon which shall be endorsed a brief statement of the nature of the claim.

(3) Where a Notice of Action is used, the plaintiff shall file his Statement of Claim (Form 16C) within 30 days of the issuing of the Notice of Action, and no Statement of Claim shall be filed thereafter without leave of the court obtained on notice to the defendant.

16.04 By Notice of Application

Where a statute or rule authorizes an application to the court or a judge without requiring the institution of an action, a Notice of Application (Form 16D) may be used and, in addition thereto, any proceeding may be so commenced where the relief claimed is,

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- (a) for the opinion, advice or direction of the court on any question affecting the rights of any person in respect of the administration of the estate of a deceased person or in respect of the execution of a trust;
- (b) for an order directing the executors, administrators or trustees to do or abstain from doing any particular act in respect of any estate or trust for which they are responsible;
- (c) for the removal or replacement of one or more executors, administrators or trustees, or for fixing their compensation;
- (d) for the administration of the estate of a deceased person, or for the execution of a trust by the court;
- (e) for a determination of rights which depend upon the interpretation of a deed, will, contract or other instrument, or upon the interpretation of any statute, order-in-council, regulation, municipal by-law or resolution;
- (f) for the declaration of a beneficial interest in, or charge upon land including the nature and extent thereof, or settling the priority of interests or charges;
- (g) for the approval of any arrangement or compromise or for the approval of any purchase, sale, mortgage, lease or variation of trust where such approval is necessary or desirable;
- (h) for the partition or sale of land or any estate or interest therein;
- (i) by way of interpleader;

ORIGINATING PROCESS

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- (j) for an injunction, mandatory order, declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a Notice of Application; or
- (k) in respect of any other matter where it is unlikely that there will be any substantial dispute of fact.

16.05 Style of Cause and Content

(1) In an action, the party commencing the action shall be called the plaintiff, and the opposite party, the defendant.

(2) In a Notice of Application, the party commencing the proceeding shall be called the applicant, and the opposite party the respondent; and, where the proceeding is under a particular rule or statute, the style of cause shall be:

“In the matter of (*designating the rule or statute*)
Between *A.B.*, Applicant, and *C.D.*, Respondent.”

(3) Every originating process shall contain the names of the parties and the capacity in which they are made parties to the proceeding, as well as the principal place of residence and the occupation of the party commencing the proceeding.

16.06 How Originating Process Issued

An originating process shall be issued by the registrar dating, signing and sealing it with the seal of the court and assigning to it a court file number. A true copy of the original shall remain in the court file.

16.07 Time for Service

(1) Where an action is commenced by the issuing of a Statement of Claim, it shall be served within six months thereafter.

ORIGINATING PROCESS

RULE 16

(2) Where an action is commenced by the issuing of a Notice of Action, the Notice of Action and the Statement of Claim shall be served together within six months of the issuing of the Notice of Action.

(3) A Notice of Application shall be served at least 10 days before the date upon which it is returnable except where the Notice is served out of Ontario, in which case it shall be served at least 20 days before the return date.

16.08 Striking Out or Amending

An originating process which is not a pleading may be struck out or amended in the same manner as a pleading.

COMMENCEMENT OF PROCEEDINGS

RULE 17 REPRESENTATION BY SOLICITOR

17.01 Where Solicitor is Required

Any party to a proceeding may commence or defend the proceeding in person without being represented by a solicitor unless that party is under disability or is acting in a representative capacity or is a corporation.

17.02 Declaration by Solicitor

(1) Any solicitor whose name is endorsed on any originating process shall forthwith upon receipt of a demand in writing from any person who has been served with such process declare in writing whether the proceeding was commenced by him or with his authority, and any solicitor who fails to comply with such a demand may be held in contempt.

(2) Where the solicitor declares that the proceeding was so commenced, he shall also disclose the place of residence and occupation of his client unless the court otherwise orders.

(3) Where the solicitor declares that the proceeding was not so commenced, any other party to the proceeding may apply, without notice, for an order staying or dismissing the proceeding and, where the proceeding is so stayed, no further step therein may be taken without leave of the court.

17.03 Change in Representation

(1) *Notice of Change of Solicitor*

A party represented by a solicitor may change his solicitor by serving on his former solicitor and upon every other party to the proceeding a notice to that effect.

(2) *Notice of Appointment of Solicitor*

A party representing himself in a proceeding may appoint a solicitor to represent him, in which case he shall forthwith serve upon every other party to the proceeding a notice to that effect.

REPRESENTATION BY SOLICITOR RULE 17

(3) *Notice of Intention to Act in Person*

Subject to Rule 17.01, a party represented by a solicitor may elect to represent himself in a proceeding by serving upon his solicitor and upon every other party to the proceeding a notice to that effect.

(4) *Effect of Notice*

Until any such notice has been filed with proof of service, any other party to the proceeding may continue or defend the proceeding without regard to the notice.

17.04 Application by a Solicitor to be Removed from the Record

(1) A solicitor may apply at any time for an order removing himself from the record.

(2) Notice of any such motion shall be served upon his client and upon every other party to the proceeding.

(3) The client may be served by mailing a copy of the Notice of Motion addressed to him at his last known address.

(4) The solicitor shall remain the solicitor of record for his client with all the responsibilities pertaining thereto, until an order removing him from the record has been entered, and the time for any appeal therefrom has expired, or until the client has served and filed with proof of service a notice pursuant to Rule 17.03, whichever shall first occur.

(5) Where a solicitor has ceased to be the solicitor of record for any party to a proceeding, any document in the proceeding required to be served on that party may be served by mailing a copy addressed to him at his last known address, unless or until that party has served and filed with proof of service a notice pursuant to Rule 17.03.

(6) Any order made under this rule does not otherwise affect the rights of the solicitor and the party for whom he acted as between themselves.

REPRESENTATION BY SOLICITOR

RULE 17

17.05 Where a Solicitor of Record has Ceased to Practise

Where a solicitor of record for a party to a proceeding has, for any reason, ceased to practise law, and the party for whom he has acted has failed to serve a notice pursuant to Rule 17.03, any other party to the proceeding may serve any subsequent document by mailing the same addressed to that party at his last known address or may apply to the court for directions.

SERVICE

RULE 18 SERVICE OF PROCESS

18.01 When Personal Service is Necessary

(1) *Originating Process*

- (a) Every originating process shall be served personally unless otherwise provided by any statute or by these rules.
- (b) An originating process need not be served on any party who has delivered a defence thereto without being served.

(2) *Other Documents*

No other document need be served personally unless such service is expressly required by any statute, or these rules, or by order of the court.

18.02 How Personal Service Shall be Made

(1) Personal service shall be made as follows:

- (a) *Individual.* On an individual, other than a person under disability, by leaving a copy of the document with him.
- (b) *Municipal Corporation.* On a municipal corporation, by leaving a copy of the document with the chairman, mayor, warden, reeve, or with the clerk of the municipality or his deputy or with any solicitor for the municipality.
- (c) *Other Corporation.* On any other corporation, by leaving a copy of the document with any officer, director, or any agent thereof, or the manager or person in charge of any office or other place where the corporation carries on business in Ontario.
- (d) *Board or Commission.* On any board or commission, by leaving a copy of the document with any member thereof or with the secretary of the board or commission.

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- (e) *Person out of Ontario Carrying on Business in Ontario.* Any person out of Ontario who carries on business in Ontario may be served in Ontario by leaving a copy of the document with any person carrying on such business for him in Ontario.
- (f) *Crown in Right of Ontario.* On her Majesty the Queen in right of Ontario by leaving a copy of the document with any solicitor in the Crown Law Office of the Ministry of the Attorney General.
- (g) *Crown in Right of Canada.* On her Majesty the Queen in Right of Canada by leaving a copy of the document with any solicitor in the office of the Deputy Minister of Justice in the City of Ottawa, or with the Director of the Regional Office of the Department of Justice of Canada in the City of Toronto.
- (h) *Persons Under Disability.*
 - (i) *Absentee.* On an absentee by leaving a copy of the document with his committee, if one has been appointed or, if not, with the Public Trustee.
 - (ii) *Minor.* On a minor by leaving a copy of the document with the minor and, where he resides with or in the care of his father, mother, guardian or other adult, by leaving another copy of the document with such person; unless the proceeding is against a minor in respect of his interest in an estate or trust, in which case he shall be served by leaving with the Official Guardian a copy of the document on which shall be endorsed the name and address of the minor.

SERVICE OF PROCESS

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- (iii) *Mental Incompetent.* On a person who has been declared mentally incompetent or incapable of managing his own affairs by leaving a copy of the document with the committee of his estate or, where there is no such committee, with the committee of his person. Where a person is mentally incompetent or incapable of managing his own affairs, not so declared, by leaving a copy of the document with such person and with his committee, if there is one, or, if not, by leaving a copy of the document with the Public Trustee, upon which shall be endorsed the name and address of the person under disability.
- (i) *Partnerships.* On a partnership by leaving a copy of the document with one or more of the partners or with any person at the principal place of business of the partnership who appears to be in control or management thereof.
- (j) *Sole Proprietorship.* On a sole proprietorship by leaving a copy of the document with the sole proprietor or with any person at the principal place of business of the sole proprietorship who appears to be in control or management thereof.
- (k) *Unincorporated Associations.* On an unincorporated association by leaving a copy with any officer of the association or with any person at any office or premises occupied by the association who appears to be in control or management thereof.

(2) When effecting service of any document, it shall not be necessary for the process server to produce the original document or have it in his possession.

SERVICE OF PROCESS

RULE 18

18.03 Alternatives to Personal Service

(1) *Where Available*

Where personal service is required by these rules, with the exception of Rules 33.03 and 55.03, the methods of service authorized by this sub-rule may be used as an alternative thereto.

(2) *Service on Solicitor*

Any party who is represented by a solicitor may be served by leaving a copy of the document with his solicitor, provided the solicitor endorses on a copy thereof his acceptance of such service and the date of his acceptance. By so doing, the solicitor shall be deemed to represent to the court that he has the authority of his client to accept such service.

(3) *Service by Certified Mail*

- (a) Where personal service of any document may be made by leaving a copy thereof with any person pursuant to Rule 18.02 (1), such service may be made anywhere in Ontario by sending a copy thereof, together with an Acknowledgement of Receipt Card (Form 18A) by certified mail addressed to such person at his last known address.
- (b) Service by certified mail shall be deemed to have been effected only where the Acknowledgement of Receipt Card or a post office receipt, bearing a signature which appears to be the signature of the person to be served, is returned to and received by the sender.
- (c) Service by certified mail shall be deemed to have been effected on the date the sender first receives either receipt, duly signed, as provided in clause (b).

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RULE 18

(4) *Service at Place of Residence*

Where an attempt is made to personally serve any person at his place of residence and for any reason such service cannot be effected, the document may be served on such person by leaving a copy thereof, in a sealed envelope addressed to him, with any person who appears to be an adult and a member of his household and on the same day mailing another copy of the document addressed to the person to be served at his place of residence.

(5) *Service on a Corporation*

Where the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Ontario, cannot be found at the last address recorded with the Ministry of Consumer and Commercial Relations, the corporation may be served by mailing a copy of the document addressed to the corporation or to the attorney for service in Ontario, as the case may be, at that address and by mailing a copy of the document to that Ministry.

18.04 Substituted Service

Where personal service of a document is required by these rules, and it appears to the court that it is impractical for any reason to effect prompt personal service of that document, the court may make an order for substituted service thereof, or where necessary in the interests of justice, dispense with such service.

18.05 Where Personal Service Not Required

Any document which is not required to be served personally,

- (a) shall be served upon a party to a proceeding, where he has a solicitor of record, by serving that solicitor, and such service may be effected by mailing a copy of the document addressed to the solicitor at his office; and

SERVICE OF PROCESS

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- (b) may be served upon a party to a proceeding who has no solicitor of record, or upon a person who is not a party to the proceeding, by mailing a copy of the document addressed to him at the last address for service furnished by him, or, if no such address has been furnished, at his last known address.

18.06 Service by Mail

Where the mailing of a document is authorized or required by these rules, the document is to be sent by prepaid first class mail and, except as provided by Rule 18.03 (3)(c), service thereof shall be deemed to have been effected on the fifth day following the date of mailing.

18.07 Service on Solicitor of Record

(1) Where service of a document on the solicitor of record for a party is authorized or required by these rules, the document may also be served by leaving a copy thereof with a clerk in the office of the solicitor or by depositing a copy thereof at a document exchange of which the solicitor is a member or subscriber, provided that the original and the copy of such document are date stamped by the document exchange in the presence of the person depositing the document.

(2) Where a copy of a document has been deposited at a document exchange pursuant to paragraph (1), the document shall be deemed to have been served on the next day, that is not a holiday, following that upon which it was deposited and date stamped.

18.08 Deemed Service Not Conclusive

Notwithstanding the fact that by these rules a person is deemed to have been served with any particular document, the contrary may be shown on any motion made by him to set aside the consequences of his default, or on any motion for the adjournment of a proceeding, or for an extension of time.

SERVICE OF PROCESS

RULE 18

18.09 Validating Service

Where a document has been served by some method not authorized by these rules or by an order of the court, or where there has been some irregularity in the service thereof, the court may make an order validating the service on such terms as may seem just, where the court is satisfied that,

- (a) the document came to the notice of the person sought to be served; or
- (b) the document was so left that it would have come to the notice of the person sought to be served, except for his own attempts to evade service.

18.10 Proof of Service

(1) The service of any document may be proved by an affidavit of the person effecting such service (Form 18B).

(2) The personal service of any document by a sheriff or his officer may be proved by a Certificate of Service (Form 18C) endorsed on a copy of the document served.

(3) The written admission or acceptance of service by a solicitor is sufficient proof of service and need not be verified by an affidavit.

(4) The service of any document by depositing a copy thereof at a document exchange in accordance with the provisions of Rule 18.07 may be proved by the date stamped on the original by the document exchange.

SERVICE

RULE 19 SERVICE OUT OF ONTARIO

19.01 Service Out of Ontario Without Leave

A party to a proceeding may, without a court order, be served out of Ontario with an originating process where the proceeding against that party consists of a claim or claims,

- (a) in respect of real property situate within Ontario, or the administration of the estate of a deceased person in respect of such property;
- (b) in respect of personal property situate within Ontario, or the administration of the personal property of a deceased person who, at the time of his death, was resident within Ontario;
- (c) for the construction, rectification, enforcement or setting aside of any deed, will, contract or obligation in respect of real or personal property situate within Ontario, or in respect of the personal property of a deceased person who, at the time of his death, was resident within Ontario;
- (d) against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property situate within Ontario;
- (e) for foreclosure, sale, possession or redemption in respect of a mortgage, charge or lien on real or personal property situate within Ontario;

SERVICE OUT OF ONTARIO

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(f) in respect of a contract where,

- (i) the contract was made within Ontario;
- (ii) the contract was made by or through an agent trading or residing within Ontario on behalf of a principal trading or residing out of Ontario;
- (iii) the contract provides that it is to be governed by or interpreted in accordance with the laws of the Province of Ontario;
- (iv) the parties thereto have agreed that the courts of Ontario shall have jurisdiction to entertain any action in respect of the contract ; or
- (v) a breach has been committed within Ontario, even though such breach was preceded by or accompanied by a breach out of Ontario which rendered impossible the performance of that part of the contract which ought to have been performed within Ontario;

(g) in respect of a tort committed within Ontario;

(h) in respect of damage sustained in Ontario arising from a tort or breach of contract wherever committed;

(i) for an injunction ordering any such party to do, or refrain from doing, anything within Ontario or affecting real or personal property situate within Ontario;

(j) for support;

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- (k) for the custody of, or access to a minor;
- (l) to declare the invalidity of a marriage;
- (m) upon a judgment of a foreign court;
- (n) which, by any statute, may be made against a person out of Ontario by a proceeding commenced in Ontario; (e.g. *The Carriage by Air Act*; *The Business Corporations Act*);
- (o) against a person out of Ontario who is a necessary or proper party to a proceeding properly brought against another person duly served within Ontario;
- (p) against a person domiciled or ordinarily resident within Ontario, or carrying on business there;
- (q) properly the subject matter of a cross-claim or a third party claim under these rules;
- (r) made by or on behalf of the Crown or any municipal corporation to recover monies owing for taxes or other debts due to the Crown or to the municipality.

19.02 Service Out of Ontario With Leave

(1) The court may in any case grant leave to serve an originating process or any other document outside Ontario where one or more of the parties reside within Ontario and such service appears necessary to secure the just determination of a civil proceeding affecting any such party or parties.

SERVICE OUT OF ONTARIO

RULE 19

(2) A motion for leave to serve a party outside Ontario may be made without notice, and shall be supported by an affidavit or other evidence showing in which place or country that person is or probably may be found, and the grounds upon which the motion is made.

19.03 Additional Requirements for Service Out of Ontario

(1) Any originating process served out of Ontario without leave shall disclose the facts, and specifically refer to the provisions of this rule, relied upon in support of such service.

(2) Where an originating process is served out of Ontario with leave of the court, there shall be served with the originating process a copy of the order granting such leave, and a copy of any affidavit used to obtain the order.

19.04 Manner of Service Out of Ontario

(1) An originating process or other document to be served out of Ontario may be served in the manner provided by these rules for service in Ontario, or in the manner prescribed by the law of the foreign jurisdiction, provided such service is reasonably calculated to give actual notice.

(2) Proof of service may be made in the manner prescribed by these rules for proof of service in Ontario or in the manner provided by the law of the jurisdiction where service was made.

19.05 Motion to Set Aside Service Out of Ontario

(1) A party who has been served out of Ontario with an originating process without leave may apply to the court, within the time limited for delivering any pleading or affidavit in defence thereto and before delivering any such defence,

- (a) for an order setting aside such service or staying the proceeding; or
- (b) for leave to dispute the jurisdiction of the court in his pleading or affidavit in defence of the proceeding.

SERVICE OUT OF ONTARIO

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(2) An order may be made under paragraph (1) on the ground that service out of Ontario is not authorized by these rules or that Ontario is not a convenient forum for the trial or hearing of the proceeding.

(3) A party who has been served out of Ontario with an originating process with leave may apply to the court, within the time limited for the delivery of any pleading or affidavit in defence thereto and before delivering any such defence, to set aside the order granting such leave.

(4) If on a motion under paragraph (1) the court concludes that service out of Ontario is not authorized by these rules, but the case is one in which it would be appropriate to grant leave to serve out of Ontario under Rule 19.02, the court may validate the service.

SERVICE

RULE 20 TIME FOR DELIVERY OF STATEMENT OF DEFENCE

20.01 Time for Delivery of Statement of Defence

Subject to Rule 20.02, a Statement of Defence (Form 20A) shall be delivered,

- (a) within 20 days after service of the Statement of Claim where the defendant is served in Ontario;
- (b) within 40 days after service of the Statement of Claim where the defendant is served elsewhere in Canada or within the United States of America; or
- (c) within 60 days after service of the Statement of Claim where the defendant is served anywhere else in the world.

20.02 Notice of Intent to Defend

(1) Any defendant served with a Statement of Claim who intends to defend the action may, within the time limited for the delivery of his Statement of Defence, serve upon the plaintiff and file, with proof of service, a Notice of Intent to Defend (Form 20B).

(2) Any defendant who serves and files a Notice of Intent to Defend within the time prescribed for so doing, shall be entitled to an additional 10 days within which to deliver his Statement of Defence, and he shall be deemed to have attorned to the jurisdiction of the court.

DISPOSITION WITHOUT TRIAL

RULE 21 DEFAULT PROCEEDINGS

21.01 Noting Default

(1) Where a defendant fails to deliver his Statement of Defence and the time for so doing has expired, the plaintiff may, upon filing proof of service of the Statement of Claim, require the registrar to note the default of such defendant.

(2) Where the Statement of Defence of a defendant has been struck out without leave to deliver another, or with leave to do so and the defendant has failed to deliver another within the time allowed, the plaintiff may require the registrar to note the default of such defendant upon filing a copy of the order striking out the Statement of Defence.

(3) Where the plaintiff has failed to require the registrar to note a defendant in default, any other defendant who has delivered a Statement of Defence and wishes to set the action down for trial may, on notice to the plaintiff, apply for leave to require the noting of such default.

(4) Until a defendant has been noted in default, he shall be entitled to deliver his Statement of Defence.

21.02 Consequences of Noting Default

(1) A defendant who has been noted in default,

(a) shall be deemed to admit the truth of all allegations of fact made in the Statement of Claim; and

(b) shall not deliver a Statement of Defence or take any other step in the proceeding, without leave of the court or the consent of the plaintiff, except a motion to set aside any judgment obtained against him by reason of his default.

DEFAULT PROCEEDINGS

RULE 21

(2) Notwithstanding the provisions of any other rule, any step in the proceeding may be taken without the consent of a defendant who has been noted in default, and he shall not be entitled to notice of any step in the proceeding and need not be served with any other document therein except,

- (a) as provided in Rules 27, 28, 29 and 30; or
- (b) where any party requires his personal attendance; or
- (c) where otherwise ordered.

21.03 Setting Aside the Noting of Default

The noting of default may be set aside by the court at any time on such terms as may seem just.

21.04 By Signing Default Judgment

(1) After the noting of default, a plaintiff may require the registrar to sign judgment against a defendant noted in default in respect of a claim for,

- (a) a debt or a liquidated demand in money (Form 21A);
- (b) the recovery of possession of land (Form 21B);
- (c) the recovery of chattels (Form 21C); or
- (d) foreclosure, sale or redemption of a mortgage. (See Forms prescribed by Rule 65).

(2) Before the signing of default judgment, there shall be filed with the registrar,

- (a) an affidavit that the plaintiff is still entitled to the relief sought and, where any part of the claim has been satisfied, the part so satisfied shall be specified; and

DEFAULT PROCEEDINGS

RULE 21

- (b) where the plaintiff is represented by a solicitor, the certificate of his solicitor that, in his opinion, the claim is one coming within the class of cases for which default judgment may properly be signed; or
- (c) where the plaintiff is not represented by a solicitor, and the registrar is in doubt whether the claim is one coming within the class of cases for which default judgment may be properly signed, he shall obtain the *fiat* of a master or local master of the Supreme Court or a judge of the county court, as the case may be.

(3) Where the claim has been partially satisfied, the default judgment shall be confined to the remainder of the claim.

(4) Unless the default judgment directs a reference, the registrar shall, on signing the judgment, fix the costs to which the plaintiff is entitled against the defendant in default in accordance with the appropriate tariffs.

(5) No default judgment may be signed against a party under disability without the leave of a judge.

21.05 By Proceeding to Trial

After the noting of default, the plaintiff shall proceed to trial in respect of any claim for,

- (a) unliquidated damages, unless the amount of the damages has been agreed upon; or
- (b) a declaration of the invalidity of a marriage.

DEFAULT PROCEEDINGS

RULE 21

21.06 By Motion for Judgment

(1) After the noting of default, the plaintiff may apply to a judge for judgment on the Statement of Claim as against a defendant noted in default in respect of any claim for which he has not signed default judgment or for which he is not required by Rule 21.05 to proceed to trial.

(2) Where, for any reason, an action proceeds to trial, a motion for judgment on the Statement of Claim, as against a defendant noted in default may be made at the trial.

21.07 Effect of Default Judgment

(1) Any judgment obtained against a defendant after he has been noted in default shall be without prejudice to the right of the plaintiff to proceed against the same defendant for any other relief or against any other defendant for the same or any other relief.

(2) A plaintiff is not entitled to judgment on a motion for judgment or at trial merely because the facts alleged in his Statement of Claim are deemed to be admitted, unless such facts entitle him to judgment as a matter of law.

21.08 Setting Aside Default Judgment

(1) Any judgment signed by the registrar against a party noted in default may be set aside or varied by the court, upon such terms as may seem just.

(2) Any judgment obtained on a motion for judgment on the Statement of Claim, either before or at the trial, may be set aside or varied by a judge on such terms as may seem just.

(3) As a term of setting aside a default judgment, the court may, where appropriate, allow any Writ of Seizure and Sale issued pursuant to the default judgment to remain on file in the office of a sheriff, or in an office of Land Titles, pending the final disposition of the action, on condition that any proceedings to enforce the Writ of Seizure and Sale be stayed in the meantime or otherwise as the court may order.

DEFAULT PROCEEDINGS

RULE 21

21.09 Application to Counterclaims, Cross-Claims and Third Party Claims

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

DISPOSITION WITHOUT TRIAL

RULE 22 SUMMARY JUDGMENT

22.01 Where Available

(1) *To Plaintiff*

- (a) At any time before an action is set down for trial, the plaintiff may apply for summary judgment against a defendant who had delivered his Statement of Defence, or has served a Notice of Motion, on the ground that,
 - (i) there is no defence to the action, or with respect to one or more of the claims contained therein or to the whole or part of any such claim; or
 - (ii) the only defence is to the amount claimed.
- (b) Where there is some special reason for urgency, the plaintiff may apply, without notice, for leave to serve a Notice of Motion for Summary Judgment with the Statement of Claim, and such leave may be given, subject to such directions as may seem just.

(2) *To Defendant*

At any time after he has delivered his Statement of Defence and before the action is set down for trial, a defendant may apply for summary judgment against the plaintiff on the ground that there is no merit in the action, or with respect to one or more claims therein, or to the whole or part of any such claim.

22.02 Affidavit Evidence

- (1) Before any party may be heard on a motion for summary judgment, he shall have delivered his own affidavit setting forth all the material facts upon which he intends to rely to the extent that he has personal knowledge thereof, and in which he swears that he knows of no fact material to the motion which has not been disclosed.

SUMMARY JUDGMENT

RULE 22

(2) To the extent that any party does not have personal knowledge of the material facts upon which he intends to rely, he shall also deliver the affidavit of some other person having such knowledge.

(3) Where the defendant is acting in a representative capacity or where the defendant is under disability and is represented by a litigation guardian or a committee, and the defendant or his litigation guardian or a committee, as the case may be, after careful inquiry, is unable to comply with the requirements of this sub-rule, and does not feel justified in admitting the claim of the plaintiff, he may deliver an affidavit to that effect.

22.03 Cross-Examination

(1) Any party to a motion for summary judgment, who has delivered his own affidavit and the affidavit of every other person upon which he intends to rely, may cross-examine the deponent of any affidavit delivered by or on behalf of the opposite party.

(2) Where a party has cross-examined under paragraph (1), he shall not deliver any additional affidavit for use on the hearing of the motion without leave or consent; and such leave may be granted where the court is satisfied that he ought to be permitted to respond by affidavit to any matter raised on the cross-examination.

(3) The right to cross-examine under paragraph (1) shall be exercised with reasonable diligence, and the court may refuse an adjournment of the motion for the purpose of cross-examination where the party seeking the adjournment has failed to do so.

22.04 Disposition of Motion

(1) *Where No Defence or Merit to Action*

Where the applicant satisfies the court that there is no defence or merit to the action, as the case may be, or with respect to any particular claim or any part thereof, and that the applicant is entitled to judgment as a matter of law, the court may grant judgment.

SUMMARY JUDGMENT

RULE 22

(2) *Where Only Defence is to the Amount Claimed*

Where the plaintiff satisfies the court that the only defence is to the amount claimed, the court may either direct a trial of that issue or a reference to determine that amount.

(3) *Where Only Issue is a Question of Law*

Where the court is satisfied that the only issue is a question of law, the court may determine that question and grant judgment accordingly; provided, however, that where the motion is before a master or local master, he may adjourn the motion to a judge.

(4) *Where Only Claim is for an Accounting*

Where the only claim is for an accounting and the defendant fails to satisfy the court that there is some preliminary issue to be tried, the court may grant judgment with a reference.

22.05 Where a Trial is Necessary

(1) Where summary judgment is refused, or is granted in part only, and a trial is necessary, the court may make an order specifying what material facts, if any, are not in dispute, and defining the remaining issues, unless such issues are sufficiently defined by the pleadings, and may order that the action proceed to trial by being,

- (a) placed forthwith, or within a specified time, on a list of cases requiring speedy trial; or
- (b) set down for trial in the normal course, or within a specified time.

(2) Where an action is ordered to proceed to trial, in whole or in part, the court may impose such terms and conditions as may seem just including an order,

- (a) for the payment into court of the whole or any part of the claim, and in addition thereto or in lieu thereof, an order for security for costs.

SUMMARY JUDGMENT

RULE 22

- (b) that the scope of examinations for discovery be limited to matters not covered by the affidavits filed on the motion and any cross-examinations thereon, and that such affidavits and cross-examinations be used in addition to or in lieu of examinations for discovery.

(3) Where any party fails to comply with an order for payment into court or for security for costs, the opposite party may apply to the court for an order dismissing the action or striking out the Statement of Defence, as the case may be, with or without costs as may seem just. Where on such a motion the Statement of Defence is struck out, the defendant shall be deemed to be noted in default, and the plaintiff may also move for judgment in respect of any claim for relief for which he is not required by Rule 21.05 to set the action down for trial.

(4) Where it appears that the enforcement of any summary judgment ought to be stayed pending the determination of any claim in the action or in any counterclaim, cross-claim or third party claim, the court may so order upon such terms as may seem just.

22.06 Cost Sanctions for Improper Use of Rule

(1) *Where Motion Fails*

Where, on a motion for summary judgment, the applicant obtains no relief and the action as originally constituted is allowed to proceed to trial without the imposition of terms or conditions, the court shall fix the costs of the opposite party and order the applicant to pay those costs forthwith unless the court is satisfied that the motion, although unsuccessful, was nevertheless justified.

(2) *Where Affidavit Filed in Bad Faith*

Where it appears to the court that any affidavit filed on a motion under this rule was filed in bad faith or solely for the purpose of delay, the court may fix the costs of the opposite party and order the party filing the affidavit to pay those costs forthwith.

SUMMARY JUDGMENT

RULE 22

22.07 Effect of Summary Judgment

Where a plaintiff obtains summary judgment under this rule, such judgment shall be without prejudice to his right to proceed against the same defendant for any other relief or against any other defendant for the same or any other relief.

**22.08 Application to Counterclaims, Cross-Claims
and Third Party Claims**

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

DISPOSITION WITHOUT TRIAL

RULE 23 DETERMINATION OF A QUESTION OF LAW

23.01 Where Available

(1) The plaintiff or a defendant may, at any time before the action is set down for trial, apply to a judge,

- (a) for the determination, prior to trial, of any question of law raised by any pleading in the action where the determination of that question may either dispose of the action, shorten the trial, or result in a substantial saving of costs;
- (b) to strike out any pleading on the ground that it discloses no reasonable cause of action or defence; or
- (c) for judgment upon any admission of fact in the pleadings, in the examination of any other party or in answer to a Notice to Admit.

(2) A defendant may, at any time before the action is set down for trial, apply to a judge to have the action stayed or dismissed on the ground that,

- (a) the court is without jurisdiction to try the action;
- (b) the plaintiff is without legal capacity to commence or continue the action;
- (c) another action is pending in the same or another jurisdiction between the same parties and in respect of the same claim; or
- (d) the action is scandalous, frivolous or vexatious, or is otherwise an abuse of the process of the court.

**DETERMINATION OF A
QUESTION OF LAW**

RULE 23

23.02 No Evidence Admissible Without Leave

No evidence, other than a transcript of any relevant examination, shall be admissible on a motion under Rule 23.01 (1) without leave of the judge, except for such affidavits as are necessary to identify any document or prove its execution.

23.03 Effect of Judgment under This Rule

Where a plaintiff obtains judgment under this rule, such judgment shall be without prejudice to his right to proceed against the same defendant for any other relief, or against any other defendant for the same or any other relief unless the judge otherwise orders.

DISPOSITION WITHOUT TRIAL

RULE 24 STATED CASE

24.01 Where Available

(1) Where the parties to an action concur in stating one or more questions of law, in the form of a stated case, for the opinion of the court, any party may apply to a judge for leave to set the stated case down for hearing.

(2) Such leave may only be granted where the judge is satisfied that the determination of such questions will either dispose of the action or facilitate the determination of the matters in issue.

24.02 Form of Stated Case

A stated case shall set out concisely the facts agreed upon between the parties, including such reference to any documents as may be necessary to enable the judge to determine the questions stated and shall be signed by the parties or their solicitors (Form 24A).

24.03 Hearing of Stated Case

(1) Upon the hearing of a stated case, the entire contents of any documents referred to therein may be read, and the judge may draw any inference from the facts and the documents as might have been drawn therefrom if they had been proved at a trial.

(2) Where the parties have agreed upon the specific relief to be granted on the determination of the questions of law so stated, and where that agreement has been set out in the stated case, the judge may, on the determination of such questions, grant judgment accordingly.

24.04 Removal into Court of Appeal

Any party to an action may apply to a judge of the Court of Appeal for leave to have a stated case determined by that court where the questions of law so stated,

- (a) raise a constitutional issue;

STATED CASE

RULE 24

- (b) require the interpretation of a statute;
- (c) question the validity of a regulation purporting to have been made pursuant to statutory authority; or
- (d) raise an issue in respect of which,
 - (i) there are conflicting decisions of judges of the High Court and there is no decision of an appellate court in Ontario;
 - (ii) there is a conflict between a decision of an appellate court in Ontario and that of an appellate court of another province or between decisions of appellate courts of at least two other provinces; or
 - (iii) one of the parties will seek to establish that a previous decision of an appellate court in Ontario should not be followed.

DISPOSITION WITHOUT TRIAL

RULE 25 DISCONTINUANCE AND WITHDRAWAL

25.01 Discontinuance by Plaintiff

A plaintiff may discontinue his action against any defendant, either in whole or in part,

- (a) at any time before the close of pleadings, by serving upon all parties who have been served with the Statement of Claim, a Notice of Discontinuance (Form 25A) and filing the notice with proof of service;
- (b) after the close of pleadings, by obtaining leave of the court; or
- (c) at any time, by filing the consent in writing of all parties.

25.02 Withdrawal by Defendant

(1) A defendant may withdraw his Statement of Defence, or any part of his defence, with respect to any plaintiff at any time by delivering to all parties a Notice of Withdrawal (Form 25B); provided that, where there is a counterclaim, cross-claim or third party claim, leave to withdraw must be obtained from the court.

(2) Where a defendant wholly withdraws his Statement of Defence under this rule, he shall be deemed to have been noted in default.

25.03 Costs on Discontinuance or Withdrawal

A party wholly discontinuing an action or wholly withdrawing his Statement of Defence against another party shall pay the costs of the other party to date, including the costs of any cross-claim or third party claim, unless otherwise ordered by the court, or the parties otherwise consent.

DISCONTINUANCE AND WITHDRAWAL RULE 25

25.04 Effect of Discontinuance on Counterclaim

Where an action is discontinued against a defendant who has counterclaimed, he may, within 30 days thereafter, deliver a Notice of Election (Form 25C) to proceed with his counterclaim. In default of such election, the counterclaim shall be deemed to be discontinued without costs.

25.05 Effect of Discontinuance on any Cross-Claim or Third Party Claim

Where an action is discontinued against a defendant who has commenced a cross-claim or third party claim, the cross-claim or third party claim shall be deemed to be dismissed with costs payable by the plaintiff, unless the court otherwise orders.

25.06 Effect on Subsequent Action

(1) The discontinuance of an action in whole or in part shall not be a defence to a subsequent action, unless otherwise provided by the order giving leave to discontinue or by the consent filed.

(2) Where a subsequent action in respect of the same subject matter is brought before payment of the costs of a discontinued action, the court may order a stay of the subsequent action until those costs have been paid.

25.07 Application to Counterclaim, Cross-Claim and Third Party Claim

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

DISPOSITION WITHOUT TRIAL

RULE 26 DISMISSAL OF ACTION FOR WANT OF PROSECUTION

26.01 Where Available

Any defendant who is not himself in default under these rules, or under any order of the court, may apply to have an action dismissed for want of prosecution where the plaintiff has failed,

- (a) to serve his Statement of Claim on all the defendants within the time limited for so doing;
- (b) to note in default any defendant for failure to deliver his Statement of Defence, within 30 days after such default;
- (c) to set the action down for trial within six months after the close of pleadings; or
- (d) to apply to the court for leave to restore to a list for trial any action which has been struck off a list for trial, within 30 days thereafter.

26.02 Effect of Dismissal on Counterclaim

The dismissal of an action for want of prosecution shall be without prejudice to the right of the defendant to proceed with his counterclaim, unless the court otherwise orders.

26.03 Effect of Dismissal on Cross-Claim or Third Party Claim

Where an action is dismissed for want of prosecution, any cross-claim or third party claim shall be deemed to be dismissed, with costs payable by the plaintiff, unless the court otherwise orders.

26.04 Effect on Subsequent Action

(1) The dismissal of an action for want of prosecution shall not be a defence to a subsequent action unless otherwise provided in the order dismissing the action.

(2) Where a subsequent action in respect of the same subject matter is brought before payment of the costs of an action dismissed for want of prosecution, the court may order a stay of the subsequent action until those costs have been paid.

**DISMISSAL OF ACTION
FOR WANT OF PROSECUTION**

RULE 26

26.05 Failure to Set Action Down for Trial Within One Year

(1) Every registrar shall maintain a list of all actions in which, after the coming into force of these rules, a Statement of Defence is filed in his office. An action shall only be removed from that list when the action has been set down for trial or terminated.

(2) When an action has been on the list for one year, the registrar shall mail to the solicitors of record, or, where there is no solicitor of record, to the party, a Notice of Status Hearing (Form 26A) at least 60 days before the date fixed for the hearing.

(3) Unless the action has been set down for trial or terminated before the date fixed for the hearing, the solicitors of record shall attend and the parties may attend on the hearing. Where a party represented by a solicitor does not attend, the solicitor shall, on the hearing, file proof that a copy of the notice was served on his client.

(4) On the status hearing, the judge shall order the action to be set down for trial within a time limit specified in the order, or he may adjourn the hearing to a fixed date or make such other order as may seem just.

(5) Unless the action is set down for trial within the time limit so ordered, or it is terminated in the meantime, the registrar shall dismiss the action for want of prosecution.

**26.06 Application to Counterclaim, Cross-Claim and
Third Party Claim**

Subject to the provisions of Rules 28, 29 and 30, this rule shall apply, with any necessary modification, to a counterclaim, a cross-claim or a third party claim.

PLEADINGS

RULE 27 PLEADINGS

27.01 Pleadings Required or Permitted

(1) In an action, pleadings shall consist of the Statement of Claim and a Statement of Defence and may include a Reply (Form 27A).

(2) In a counterclaim, pleadings shall consist of the Counterclaim (Form 27B), and a Defence to Counterclaim (Form 27C) and may include a Reply to Defence to Counterclaim (Form 27D).

(3) In a cross-claim, pleadings shall consist of the Cross-Claim (Form 27E) and a Defence to Cross-Claim (Form 27F) and may include a Reply to Defence to Cross-Claim (Form 27G).

(4) In a third party claim, pleadings shall consist of the Third Party Claim (Form 27H) and a Third Party Defence (Form 27I) and may include a Reply to Third Party Defence (Form 27J).

(5) No reply which merely amounts to a joinder of issue shall be delivered. If a reply is not delivered within the time limited for the delivery thereof, there shall be an implied joinder of issue which shall operate as a denial of every material allegation of fact made in the previous pleading of the opposite party.

(6) No pleading subsequent to a reply shall be delivered without the consent in writing of the opposite party or by leave of the court.

27.02 Additional Requirements

Pleadings shall be divided into paragraphs numbered consecutively, and each allegation so far as is practicable shall be contained in a separate paragraph.

PLEADINGS

RULE 27

27.03 Service of Pleadings

(1) *Who is to be Served*

Every pleading shall be served on the opposite party and upon every other person who is, at the time of such service, a party to the action or to any counterclaim, cross-claim or third party claim in the action.

(2) *Service on Added Parties*

Where a person is added as a party to an action by an order of the court, or is made a party to a counterclaim or to a third party claim in the action, it shall be the responsibility of the party adding him to serve upon the added party a copy of all the pleadings previously delivered in the action or in any counterclaim, cross-claim or third party claim in the action.

(3) *Where Personal Service Not Required*

Where a pleading is an originating process and is required to be served on a party, other than an opposite party, personal service is not required.

27.04 Time for Delivery of Pleadings

(1) The time for delivery of a Statement of Claim is prescribed by Rule 16.07.

(2) The time for delivery of a Statement of Defence is prescribed by Rule 20.01.

(3) A Reply shall be delivered within 10 days after service of the Statement of Defence.

(4) The time for delivery of pleadings in a counter-claim is prescribed by Rule 28.

(5) The time for delivery of pleadings in a cross-claim is prescribed by Rule 29.

(6) The time for delivery of pleadings in a third party claim is prescribed in Rule 30.

PLEADINGS

RULE 27

27.05 Close of Pleadings

Pleadings are deemed to be closed upon the noting of the defendant in default, or upon the delivery of the Reply or when the time for delivery thereof has expired.

27.06 Rules of Pleading - Applicable to All Pleadings .

(1) *Material Facts*

Every pleading shall contain a concise statement of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which those facts are to be proved.

(2) *Pleading Law*

A party may raise any point of law in his pleading. Conclusions of law may be pleaded provided that the material facts supporting such conclusions are pleaded.

(3) *Facts Presumed unless Denied*

Unless the opposite party has specifically denied it in his pleading, a party need not plead any fact which is presumed by law to be true or where the burden of disproving it lies on the opposite party.

(4) *Condition Precedent*

Unless the opposite party has specifically denied it in his pleading, a party need not plead the performance or occurrence of a condition precedent to the assertion of his claim or defence.

(5) *Inconsistent Pleading*

- (a) A party may plead inconsistent allegations, provided the pleading makes it clear that such allegations are being pleaded in the alternative.
- (b) No allegation in a Reply shall be inconsistent with an allegation made in the Statement of Claim or raise a new claim. Such an allegation may only be pleaded by way of amendment to the Statement of Claim.

PLEADINGS

RULE 27

(6) *Notice*

Where notice to any person is alleged, it is sufficient to allege such notice as a fact unless the form or precise terms of the notice is or are material.

(7) *Contract or Agreement*

Where it is material to allege that a contract or agreement is to be implied from a series of letters or conversations or from any other circumstances, it is sufficient to allege the contract or agreement as a fact.

(8) *Documents or Conversations*

The effect of any document or the purport of any conversation, if material, shall be pleaded as briefly as possible, but the precise words of the document or conversation shall not be pleaded unless those words are themselves material. Where a document is the basis of a claim or defence, a copy of such document or the material parts thereof may be attached as a schedule to the pleading.

(9) *Nature of Act or Condition of Mind*

Where fraud, misrepresentation or breach of trust is alleged, the pleading shall contain full particulars thereof; but malice, intent or knowledge may be alleged as a fact without pleading the circumstances from which the same is to be inferred.

(10) *Claim for Relief*

Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, when damages are claimed, the amount shall be stated. Particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but further particulars shall be delivered forthwith after they become available and, in any event, not less than 10 days before trial.

PLEADINGS

RULE 27

(11) *Subsequent Facts*

A party may plead any fact that has occurred since the commencement of the action and, where any such fact occurs after the delivery of his pleading, he may apply to the court for leave to deliver an amended pleading. Such leave may be granted upon such terms as may seem just where the amendment will permit the convenient administration of justice, notwithstanding that any such fact may give rise to a new claim or defence.

27.07 Rules of Pleading - Applicable to Defence and Reply

(1) *Admissions and Denials*

A party, in his defence or reply, shall specifically admit every allegation of fact in the pleading of the opposite party which is not disputed by him and, subject to paragraph (5), all allegations of fact which are not denied either generally or specifically shall be deemed to be admitted unless the party pleading to any such allegation alleges that he has no knowledge in respect thereof.

(2) *Different Version of Facts*

Where it is intended to prove a different version of the facts than that pleaded by the opposite party, a mere denial of the version so pleaded is not sufficient, but a party, in his defence or reply, shall plead his own version of the facts.

(3) *Affirmative Defences*

A party, in his defence or reply, shall plead any matter upon which he intends to rely to defeat the claim or defence of the opposite party and which, if not specifically pleaded, might take the opposite party by surprise or raise an issue which has not been raised in any previous pleading.

PLEADINGS

RULE 27

(4) *Effect of Denial of Contract*

Where a contract or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial of the making of the contract or agreement alleged, or of the facts from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract or agreement.

(5) *Damages*

In an action for damages, the amount thereof shall be deemed to be in issue, unless specifically admitted.

27.08 Particulars

(1) Where a party demands better particulars of any allegation in the pleading of the opposite party, and the opposite party fails to supply them within 5 days, the court may, upon such terms as may seem just, order such particulars to be delivered within a specified time.

(2) Particulars, for the purpose of pleading, may be ordered when the pleading in question is so vague or ambiguous that the opposite party cannot reasonably be required to frame a responsive pleading thereto.

(3) Particulars, for the purpose of trial, may be ordered after the close of pleadings where such particulars appear necessary to define the issues for trial or to avoid surprise at trial.

27.09 Striking Out a Pleading or Other Document

The court may strike out or expunge any pleading, or other document, or any part thereof, at any time, with or without leave to amend, and upon such terms as may seem just, on the ground that such pleading or other document,

- (a) may prejudice, embarrass or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court.

PLEADINGS

RULE 27

27.10 Amendment of Pleadings

(1) *General Power of Court*

The court may at any stage of an action grant leave to amend any pleading and such leave shall be given, on such terms as may seem just, unless prejudice will result which cannot be compensated for by costs or an adjournment.

(2) *When Amendments May be Made*

A party may amend any pleading filed by him,

- (a) once, without leave, at any time prior to the close of pleadings, provided that the amendment does not include or require the addition, deletion or substitution of a party or parties to the action;
- (b) at any time, with the written consent of all parties or leave of the court.

(3) *When Amendments May be Disallowed*

Where a party has amended a pleading without the consent of all parties or leave of the court, any other party may, within 10 days after service on him of the amended pleading, apply to the court to disallow the amendment or for the imposition of terms.

(4) *How Amendments Made*

- (a) An amendment to any pleading shall be made on the face of the copy filed in the court office unless the amendment is so extensive as to make the amended pleading difficult or inconvenient to read, in which case a fresh copy of the original pleading as amended and bearing the date of the original pleading, shall be filed.

PLEADINGS

RULE 27

- (b) In either case, the amendment shall be underlined so as to distinguish the amended wording from the original and the amended pleading shall be endorsed by the registrar with the date upon which, and the authority by which, the amendment was made;
- (c) Where any pleading is amended on more than one occasion, each subsequent amendment shall be underlined with an additional line for each such occasion.

(5) *Service of Amended Pleading*

- (a) Unless otherwise ordered, a copy of the amended pleading shall be served forthwith upon all of the parties to the action;
- (b) Where the amended pleading is an originating process, personal service is not required unless the party to be served has not been served with the original pleading, or has failed to respond thereto, in which case personal service is required whether or not he has been noted in default.
- (c) Proof of service of an amended pleading shall be filed forthwith after the service thereof.

(6) *Pleading to an Amended Pleading*

- (a) Unless otherwise ordered, a party shall plead to an amended pleading within the time remaining for pleading to the original, or within 10 days after delivery of the amended pleading, whichever is the longer period.

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- (b) Where a party has pleaded to a pleading which is subsequently amended, he shall be deemed to rely on his original pleading in answer to such amendment unless he pleads to the amended pleading within the time limited for so doing.

(7) *Amendment at Trial*

Where a pleading is amended at the trial, and the amendment is made on the face of the record, an order need not be taken out and the pleading as amended need not be filed or served unless otherwise ordered.

(8) *Amendment After Limitation Period*

Notwithstanding that a relevant limitation period has expired since the commencement of the action, the court may allow an amendment,

- (a) asserting a new claim; or
- (b) adding or substituting a new party ;

provided the claim asserted by the amendment, or by or against the new party, arose out of the same transaction or occurrence as the original claim and the court is satisfied that no party will suffer actual prejudice as a result of the amendment.

PLEADINGS

RULE 28 COUNTERCLAIM

28.01 Where Available

(1) A defendant may assert, by way of counterclaim in the action, any right or claim which he may have against the plaintiff.

(2) Where a defendant counterclaims against a plaintiff, he may join as an added defendant by counterclaim any other person, whether a party to the action or not, who is a necessary or proper party to the counterclaim.

28.02 Statement of Defence and Counterclaim

(1) A defendant shall plead his defence and counterclaim in one document to be called a Statement of Defence and Counterclaim.

(2) Where there is an added defendant by counterclaim, the Statement of Defence and Counterclaim shall contain a second style of cause showing who is plaintiff by counterclaim and who are the defendants by counterclaim.

28.03 Time for Delivery of Statement of Defence and Counterclaim

(1) Where a counterclaim is against the plaintiff only, the Statement of Defence and Counterclaim shall be delivered within the time limited for the delivery of the Statement of Defence in the main action.

(2) Where a counterclaim is against the plaintiff and an added defendant by counterclaim, the Statement of Defence and Counterclaim shall be issued within the time limited for delivery of the Statement of Defence in the main action, and shall be served,

- (a) on the plaintiff, within the time limited for delivery of the Statement of Defence in the main action; and

COUNTERCLAIM

RULE 28

- (b) on the added defendant by counterclaim, together with a copy of the Statement of Claim in the main action, within 30 days thereafter.

(3) Personal service of a Statement of Defence and Counterclaim is not required on the plaintiff or on an added defendant by counterclaim who is a defendant to the main action unless such defendant has failed to deliver a Notice of Intent to Defend or a Statement of Defence in the main action, in which case personal service is required, whether or not he has been noted in default in the main action.

28.04 Time for Delivery of Defence to Counterclaim

(1) The plaintiff shall deliver his Defence to Counterclaim within the time limited for the delivery of a Reply, if any, in the main action, and where such a Reply is delivered, his Defence to Counterclaim shall be joined thereto.

(2) An added defendant by counterclaim shall deliver his Defence to Counterclaim within 20 days after service of the Statement of Defence and Counterclaim.

28.05 Effect of Default of Defence to Counterclaim

Where a defendant by counterclaim has been noted in default in respect of the counterclaim, the plaintiff by counterclaim may only obtain judgment against him upon motion to a judge.

28.06 Time for Delivery of Reply to Defence to Counterclaim

A Reply to Defence to Counterclaim, if any, shall be delivered within 10 days after delivery of the Defence to Counterclaim.

28.07 Discovery in Respect of Counterclaim

The parties to a counterclaim who are adverse in interest are entitled to discovery, each from the other.

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28.08 Trial of Counterclaim

A counterclaim shall be tried at the trial of the main action, unless otherwise ordered.

28.09 Disposition of Counterclaim

(1) Where it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to any party, the court may order separate trials or strike out the counterclaim without prejudice to the right of the defendant to assert any such claim in a separate action.

(2) Where a defendant does not dispute the claim of the plaintiff in the main action, but sets up a counterclaim, the court may stay the main action until the counterclaim is disposed of.

(3) Where the plaintiff does not dispute the counterclaim of a defendant, the court may stay the counterclaim until the claim is disposed of.

(4) Where both the plaintiff in the main action and the plaintiff by counterclaim succeed, either in whole or in part, and there is a balance in favour of one of them, the court may in a proper case give judgment for the balance.

28.10 Application to Counterclaim, Cross-Claim and Third Party Claim

The provisions of this rule shall apply, with any necessary modification, to the assertion of a counterclaim by an added defendant by counterclaim, a defendant to a cross-claim or a third party.

PLEADINGS

RULE 29 CROSS-CLAIM

29.01 Where Available

A defendant may cross-claim against a co-defendant whom he claims,

(a) is, or may be, liable to him for all, or any part of the claim of the plaintiff; or

(b) is, or may be, liable to him for any other relief relating to, or connected with, the subject matter of the main action.

29.02 Statement of Defence and Cross-Claim

A defendant shall plead his defence and cross-claim in one document to be called a Statement of Defence and Cross-Claim.

29.03 Time for Delivery of Statement of Defence and Cross-Claim

(1) A Statement of Defence and Cross-Claim shall be delivered within the time limited for delivery of the Statement of Defence in the main action.

(2) Personal service of a Statement of Defence and Cross-Claim is not required on a defendant against whom a cross-claim is made unless he has failed to deliver a Notice of Intent to Defend or a Statement of Defence in the main action, in which case personal service is required, whether or not he has been noted in default in the main action.

29.04 Time for Delivery of Defence to Cross-Claim

A Defence to Cross-Claim shall be delivered within 20 days after the delivery of the Statement of Defence and Cross-Claim.

CROSS-CLAIM

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29.05 Effect of Default of Defence to Cross-Claim

Where a defendant against whom a cross-claim is made has been noted in default in respect of the cross-claim, the defendant making the cross-claim may only obtain judgment against him at the trial of the main action or upon motion to a judge.

29.06 Time for Delivery of Reply to Defence to Cross-Claim

A Reply to Defence to Cross-Claim, if any, shall be delivered within 10 days after delivery of the Defence to Cross-Claim.

29.07 Discovery in Respect of Cross-Claim

The parties to a cross-claim who are adverse in interest are entitled to discovery, each from the other.

29.08 Trial of Cross-Claim

The cross-claim shall be tried at the trial of the main action, unless otherwise ordered.

29.09 Prejudice or Delay to Plaintiff

The plaintiff is not to be prejudiced or unnecessarily delayed by reason of a cross-claim, and he may apply to the court to impose such terms as may be necessary to prevent such prejudice or delay where that may be done without injustice to the parties to the cross-claim.

29.10 Application to Counterclaim and Third Party Claim

The provisions of this rule shall apply, with any necessary modification, to the assertion of a cross-claim by one defendant to a counterclaim against another defendant to the same counterclaim, or by one third party against another third party to the same third party claim.

PLEADINGS

RULE 30 THIRD PARTY CLAIM

30.01 Where Available

A defendant may commence a Third Party Claim against any person who is not a party to the action, whom he claims,

- (a) is, or may be, liable to him for all or part of the claim of the plaintiff;
- (b) is, or may be, liable to him for any other relief relating to, or connected with, the subject matter of the main action; or
- (c) should be bound by the determination of some issue arising between the plaintiff and the defendant.

30.02 Time for Delivery of Third Party Claim

(1) A Third Party Claim may be issued without leave within 10 days after the time limited for delivery of the Statement of Defence in the main action, or subsequently with leave, and such leave shall be granted unless the plaintiff would be prejudiced thereby.

(2) A Third Party Claim shall be served, together with a copy of the Statement of Claim and the Statement of Defence in the main action, on the third party, in the manner prescribed for the service of originating process, within 30 days.

(3) A Third Party Claim shall also be served on the plaintiff in the main action within the time limited for the service thereof on the third party, but personal service thereof is not required.

30.03 Third Party Defence

(1) In a Third Party Defence, a third party may dispute the liability of the defendant to the plaintiff or his own liability to the defendant, or both.

(2) Where a Third Party Defence does not dispute the liability of the defendant to the plaintiff, the third party shall be deemed to admit the validity of any judgment against the defendant obtained by the plaintiff, except a judgment obtained on consent or by default.

THIRD PARTY CLAIM

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30.04 Time for Delivery of Third Party Defence

A Third Party Defence shall be delivered within 20 days after service of the Third Party Claim.

30.05 Effect of Third Party Defence

Where a third party has delivered a Third Party Defence,

- (a) he shall be served with all subsequent pleadings and proceedings in the main action;
- (b) the parties to any third party claims who are adverse in interest are entitled to discovery, each from the other;
- (c) where the Third Party Defence disputes the liability of the defendant to the plaintiff, the third party and the plaintiff are entitled to discovery, each from the other; and
- (d) where the defendant making the third party claim has also made a cross-claim against his co-defendant, that co-defendant and the third party, if adverse in interest, are entitled to discovery, each from the other.

30.06 Effect of Default of Third Party

Where a third party has been noted in default, the defendant may only obtain judgment against him at the trial of the main action or upon motion to a judge.

30.07 Reply to Third Party Defence

A Reply to a Third Party Defence may be delivered by the defendant making the third party claim and, where a Third Party Defence disputes the liability of the defendant to the plaintiff, by the plaintiff.

30.08 Time for Delivery of Reply to Third Party Defence

A Reply to a Third Party Defence, if any, shall be delivered within 10 days after delivery of the Third Party Defence.

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30.09 Trial of Third Party Claim

(1) After the close of pleadings in the third party claim, it shall be set down for trial as an action as provided in Rule 47 without undue delay and, notwithstanding Rule 47.07, it shall be placed on the list for trial next following the main action.

(2) The Third Party Claim shall be tried at, or immediately after the trial of the main action, unless otherwise ordered.

(3) A third party who has delivered a Third Party Defence disputing the liability of the defendant to the plaintiff, shall be at liberty to appear at the trial of the main action and take part therein in such manner and to such extent as the trial judge may direct, and the third party shall be bound by any judgment or decision in the main action.

30.10 Appeal from Judgment or Order in the Main Action

A third party who has delivered a Third Party Defence disputing the liability of the defendant to the plaintiff shall have the same right to appeal from any judgment or order in the main action as if he were a defendant, and shall be entitled to notice of any appeal therefrom.

30.11 Prejudice or Delay to Plaintiff

The plaintiff is not to be prejudiced or unnecessarily delayed by reason of a third party claim, and he may apply to the court to impose such terms as may be necessary to prevent such prejudice or delay where that may be done without injustice to the defendant or the third party.

30.12 Third Party Directions

Any party affected by a third party claim may apply to the court for directions where necessary in respect of any matter of procedure not otherwise provided for in these rules.

THIRD PARTY CLAIM

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30.13 Claims by Third and Subsequent Parties

(1) A third party may assert against any person, whether or not he is already a party to the main action or to the third party claim, any claim which is properly the subject matter of a third party claim under this rule, by commencing a fourth party claim and the provisions of this rule shall apply to any such claim with any necessary modification.

(2) Personal service of a Fourth Party Claim is not required on a fourth party who is a party to the main action or to the Third Party Claim unless he has failed to deliver a Notice of Intent to Defend or a Statement of Defence in the main action or a Third Party Defence to the Third Party Claim, as the case may be, in which case personal service is required, whether or not he has been noted in default in the main action or in the Third Party Claim, as the case may be.

(3) A fourth party, or any subsequent party, may assert any such claim in a like manner and the provisions of this rule shall apply thereto with any necessary modification.

30.14 Application to Counterclaim and Cross-Claim

The provisions of this rule shall apply, with any necessary modification, to the assertion of a third party claim by a defendant to a counterclaim, or by a defendant to a cross-claim.

DISCOVERY

RULE 31 DISCOVERY OF DOCUMENTS

31.01 Definitions

In this rule,

document includes any recording of sound, film, photograph, chart, graph, map, plan, survey, any book of account and any information recorded or stored by means of any device;

subsidiary corporation means a body corporate that is controlled directly or indirectly by one or more bodies corporate;

affiliated corporation means one of two bodies corporate where one of them is the subsidiary of the other or both are subsidiaries of the same corporate body or each of them is controlled by the same person or persons.

31.02 Scope of Documentary Discovery

(1) *Disclosure*

Every document relating to any matter in issue in an action which is or has been in the possession, custody or control of any party to the action shall be disclosed, as provided in this rule, whether or not privilege is claimed in respect of that document.

(2) *Production for Inspection*

Every document relating to any matter in issue in an action in the possession, custody or control of any party to the action, shall be produced for inspection if requested, as provided in this rule, unless privilege is claimed in respect of that document.

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(3) *Insurance Policy*

A party shall disclose and produce for inspection any insurance policy under which any insurer may be liable to satisfy any part or all of any judgment which may be obtained in the action, or to indemnify or reimburse any party for any monies paid by him in satisfaction of the judgment, but no information concerning any such insurance policy shall be admissible in evidence at the trial unless it is relevant to an issue in the action.

31.03 Affidavit of Documents

(1) Unless dispensed with on consent, a party to an action shall, within 10 days after the close of pleadings, deliver to every other party an Affidavit of Documents (Form 31A) disclosing all documents which are or have been in his possession, custody or control relating to any matter in issue in the action.

(2) The affidavit shall be made by the party or, in the case of a corporation, by an officer, director or employee thereof.

(3) The affidavit shall contain,

- (a) a list and description of all documents relating to any matter in issue in the action which are in the possession, custody or control of the party and for which he claims no privilege;
- (b) a list and description of all documents relating to any matter in issue in the action which are in the possession, custody or control of the party and for which he claims privilege and the grounds for any such claim;

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- (c) a list and description of all documents relating to any matter in issue in the action which the party has had in his possession, custody or control, which he cannot now produce because they are no longer in his possession, custody or control, and he shall account for when and how he lost possession, custody or control of them and their present whereabouts, so far as he can say, either from his own knowledge or from his information or belief;
- (d) a statement by the deponent that the party has not, and has never had, any other documents relating to any matter in issue in the action in his possession, custody or control so far as the deponent knows or believes.

(4) The affidavit shall be endorsed by the solicitor for the party delivering the affidavit with a certificate that he has explained to the deponent the necessity of making a full and fair disclosure of all relevant documents and that he has no knowledge of any document not disclosed in the affidavit which should have been disclosed.

31.04 Inspection of Documents

(1) A party is entitled, at any time, to inspect any document referred to in the originating process, the pleadings, or any affidavit filed by any other party, which are in his possession, custody or control, by serving on such party a Request to Inspect Documents (Form 31B).

(2) A Request to Inspect Documents may also be used to obtain the inspection of any document listed in the Affidavit of Documents of any party as being in his possession, custody or control and which is not privileged.

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(3) A party upon whom a Request to Inspect Documents is served shall forthwith serve on the party making such request, a notice stating a time between 9:30 a.m. and 4:30 p.m. and a date within 5 days from the service of the Request to Inspect Documents on which the documents may be inspected at the office of his solicitor, or some other convenient place, and shall at the time and place so named make the documents available for inspection.

(4) The court may at any time order production for inspection of documents generally or of any particular document in the possession, custody or control of any party for which no privilege is claimed. Where privilege is claimed for any document, the court may inspect the document to determine the validity of such claim.

(5) Where a document is produced for inspection, the party inspecting the document is entitled to make a copy thereof at his own expense unless the person having possession, custody or control of the document agrees to make a copy for the party inspecting the document, if it can be reproduced, in which case he shall be reimbursed for the cost of so doing.

(6) Where a document may only become relevant after the determination of one or more of the issues in the action and the production of any such document for inspection prior to that determination would result in a serious prejudice to any party, he may apply to the court for leave to withhold the production thereof until after any such issue has been determined.

31.05 Effect of Disclosure or Production for Inspection

(1) The disclosure or the production of a document for inspection shall not be taken as an admission of the relevance or admissibility of the document.

(2) Any document listed in his Affidavit of Documents or produced for inspection by a party shall, without notice, summons or order, be taken by him to his examination for discovery and to the trial of the action, unless the parties otherwise agree.

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31.06 Where Affidavit Incomplete or Privilege Improperly Claimed

Where it is made to appear that any document in the possession, custody or control of a party may have been omitted from his Affidavit of Documents, or that a claim of privilege may have been improperly made therein, the court may,

- (a) order cross-examination upon the Affidavit of Documents;
- (b) order delivery of a further and better Affidavit of Documents;
- (c) order the disclosure or production for inspection of any document, or any part of a document, which is not privileged; and
- (d) inspect any document for the purpose of determining validity of any claim of privilege.

31.07 Documents or Errors Subsequently Discovered

Where any document relating to a matter in question in the action comes into the possession, custody or control of any party after delivering his Affidavit of Documents, or he subsequently discovers that the affidavit is inaccurate or incomplete, he shall deliver forthwith a supplementary affidavit specifying the extent to which his Affidavit of Documents requires qualification and disclosing any additional documents.

31.08 Effect of Failure to Disclose or Produce for Inspection

(1) Where a party fails to disclose any document in his Affidavit of Documents or fails to produce any document for inspection in compliance with this rule or any order made thereunder, he may not use such document at the trial, except by leave of the trial judge.

(2) Where a party fails to deliver an Affidavit of Documents or produce any document for inspection in compliance with this rule, or fails to comply with any order made under this rule, the court may,

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- (a) revoke or suspend his right, if any, to initiate or continue any examination for discovery;
- (b) dismiss his action, if he is a plaintiff, or strike out his Statement of Defence, if he is a defendant; and
- (c) impose such terms as to costs or otherwise, as to the court may seem just.

31.09 Effect of Failure to Abandon Claim of Privilege

Where a party has, at any time, claimed privilege in respect of any document and fails to abandon that claim by notice in writing and by delivering a copy of such document or producing it for inspection not less than 10 days before trial, he may not use such document at the trial, except to impeach the testimony of a witness or by leave of the trial judge.

31.10 Notice to Admit Authenticity, Dispatch or Receipt of Specified Documents

(1) Any party to an action may, at any time, require any other party thereto to admit the authenticity or dispatch or receipt of any particular document by serving upon him a notice to that effect.

(2) Where practicable, a copy of any such document shall be served with the notice, unless it appears from the Affidavit of Documents, if any, of the party to be served, that a copy thereof is in his possession.

(3) Unless the party upon whom such notice has been served, within 30 days thereafter, serves notice that he does not admit the authenticity or dispatch or receipt thereof, and that he requires it to be proved at the trial, he shall be deemed to admit that any such document described in the Affidavit of Documents,

- (a) as an original document, was printed, written, signed or executed as it purports to have been;
- (b) as a copy, is a true copy;

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(c) as a copy of a letter, telegram, cablegram or telecommunication, the original was dispatched to the addressee or received by him, as the case may be.

(4) Where the authenticity or dispatch or receipt of any document is so admitted by any party, he may not thereafter put in issue the authenticity or dispatch or receipt of that document without leave of the court.

31.11 Documents in the Possession of a Person Not a Party

(1) Where a document is in the possession, custody or control of a person not a party to the action, any party may apply to the court, on notice to such person and to every other party, for an order for the production for inspection of any such document which is not privileged.

(2) The court may order a corporate party to disclose all relevant documents in the possession, custody or control of a subsidiary or affiliated corporation, and to produce for inspection all such documents which are not privileged.

(3) No order shall be made for the production for inspection of any such document unless the court is satisfied that the document is relevant to a material issue in the action and that it would be inequitable to require the applicant to proceed to trial without having discovery of that document.

(4) Where privilege is claimed for any such document, or where the court is in doubt as to the relevance of, or the necessity for the discovery of any such document, the court may inspect the document.

31.12 Any Document may be Impounded for Safe Keeping

The court may order that any relevant document be deposited for safe keeping with the registrar and thereafter that document shall not be inspected by any person other than a party to the action, or his solicitor, except by leave of the court.

DISCOVERY

RULE 32 EXAMINATION FOR DISCOVERY

32.01 Definitions

The definitions contained in Rule 31.01 also apply to this rule.

32.02 Who May Examine and Be Examined

(1) Any party to an action may examine for discovery, once, without leave, any other party thereto who is adverse in interest to him.

(2) Where the party to be examined is a corporation, the examining party may examine an officer, director or employee thereof on behalf of the corporation; provided, however, that the corporation may apply to the court at any time prior to the examination for an order requiring the examining party to examine some other officer, director or employee thereof. Where an officer, director or employee of a corporation has been so examined, no other officer, director or employee thereof may be so examined without leave of the court.

(3) Where an action is brought by or against a partnership or a sole proprietorship in the firm name, any person who was, or is alleged to have been, a partner or the sole proprietor, as the case may be, at any relevant time, may be examined on behalf of the partnership.

(4) Where an action is brought by or against an unincorporated association, an officer or employee may be examined on behalf of the association; provided, however, that the association may apply to the court at any time prior to the examination for an order requiring the examining party to examine some other officer or employee thereof. Where an officer or employee of an association has been so examined, no other officer or employee may be so examined without leave of the court.

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(5) Where an action is brought by or against a party under disability, the litigation guardian or committee, as the case may be, may be examined in place of the person under disability, or, at the option of the examining party, the person under disability if he is competent to give evidence; provided, however, that where the litigation guardian or committee is the Official Guardian or the Public Trustee, he may only be examined with leave of the court.

(6) Where an action is brought by or against an assignee, the assignor may be examined in addition to the assignee.

(7) Where an action is brought by or against a trustee of the estate of a bankrupt, the bankrupt may be examined in addition to the trustee.

(8) Where an action is brought or defended for the immediate benefit of a person who is not a party thereto, that person may be examined in addition to the party bringing or defending the action, as the case may be.

32.03 When Proceedings for Examination may be Initiated

(1) Proceedings for the examination of a plaintiff for discovery may only be initiated after the examining party has delivered his Statement of Defence and, unless dispensed with on consent, his Affidavit of Documents.

(2) Proceedings for the examination of a defendant for discovery may only be initiated after the defendant has delivered his Statement of Defence and, unless dispensed with on consent, the examining party has delivered his Affidavit of Documents, or after the defendant has been noted in default.

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32.04 Form of Examination for Discovery

(1) Subject to paragraph (2), an examination for discovery may take the form of an oral examination or, at the option of the examining party, an examination by written questions and answers, but the examining party is not entitled to subject any person to both forms of examination except by leave of the court.

(2) Where a person is liable to be examined by more than one party, the examination for discovery shall take the form of an oral examination, unless otherwise agreed by all of the parties entitled to examine such person.

32.05 Oral Examination by More than One Party

Where any party is liable to be orally examined for discovery by more than one party, there shall be but one examination. Any adverse party may initiate the examination. The party who examined first may cover the common ground and all matters relevant to the issues between himself and the party being examined. Any other party may then cover any common ground not already covered, and all matters relevant to the issues between himself and the party being examined.

32.06 Scope of Examination

(1) Any person being examined for discovery shall answer, to the best of his knowledge, information and belief, any proper question as to any matter or document relevant to any issue in the action and no question may properly be objected to on the ground that,

- (a) the information sought is evidence;
- (b) the information sought is the name and address of a potential witness, except as provided in paragraph (2);
- (c) the question is cross-examination; provided, however, that the question is relevant to an issue in the action and is not directed solely to the credibility of the witness; or

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- (d) the question is cross-examination on the affidavit of documents of the party being examined.

(2) A party may obtain discovery of any findings, opinions and conclusions of an expert communicated to the party being examined and relevant to an issue in the action; provided, however, that the party being examined need not disclose such information nor the name and address of the expert where,

- (a) the only findings, opinions and conclusions of the expert relevant to an issue in the action were made or formed by him in preparation for contemplated or pending litigation and for no other purpose; and
- (b) the party being examined undertakes that he will not call the expert as a witness at the trial.

(3) A party may obtain discovery of the existence and contents of any insurance policy under which any insurer may be liable to satisfy part or all of any judgment which may be obtained in the action or to indemnify or reimburse any party for any monies paid by him in satisfaction of the judgment, but such information shall not be admissible in evidence at the trial unless it is relevant to an issue in the action.

(4) Where any information may only become relevant after the determination of one or more of the issues in the action and the disclosure of any such information prior to that determination would seriously prejudice any party, he may apply to the court for leave to withhold such information until after any such issue has been determined.

32.07 Effect of Refusal to Answer

Where any party being examined for discovery has refused to answer any proper question, or has refused to answer any question on the grounds of privilege, he may not introduce at the trial the information so refused on discovery, except by leave of the trial judge.

EXAMINATION FOR DISCOVERY**RULE 32****32.08 Effect of Counsel Answering**

Any question on an examination for discovery shall be answered by the party being examined but, where there is no objection, the question may be answered by counsel. Any such answer shall be deemed to be the answer of the person being examined unless, before the conclusion of his examination, he expressly repudiates, contradicts or qualifies that answer.

32.09 Information Subsequently Obtained

(1) Where a party subsequently obtains information by means of which he knows that his answer to any question on his examination for discovery was incorrect or incomplete when made, or that his answer, which was correct and complete when made, is no longer correct or complete, he shall forthwith furnish such information in the form of an affidavit to the examining party and to every other party.

(2) Where any party has failed to comply with the provisions of paragraph (1), he may not introduce at the trial the information subsequently obtained, except by leave of the trial judge.

32.10 Further Discovery with Leave

(1) The court may grant leave, upon such terms as may seem just, to examine for discovery any person who has, or is likely to have, some information relevant to a material issue in the action, where such person,

- (a) was, at any relevant time, an employee, agent, partner or spouse of a party;
- (b) was, at any relevant time, an officer, director or auditor of a corporate party;
- (c) is, or was, at any relevant time, an officer, director or employee of a corporation that was, at such time, a subsidiary or affiliate of a corporate party; or

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- (d) is a potential witness, other than an expert retained by a party adverse in interest to the applicant in preparation for contemplated or pending litigation.

(2) An order under paragraph (1) shall not be made unless the court is satisfied that the applicant has been unable to obtain such information from those he is entitled to examine for discovery, or from the person sought to be examined, and that it would be inequitable to require the applicant to proceed to trial without having the opportunity of examining that person.

(3) A party who examines any person pursuant to an order under this sub-rule shall serve every party who attended, or was represented, on the examination with a copy of the transcript thereof free of charge and, unless otherwise expressly ordered, the examining party shall not be entitled to recover from any other party his costs of such examination.

(4) For the purpose of paragraph (2) of Rule 32.11, the examination of any person under this sub-rule shall not be treated as the examination of a party or on behalf of or in place of a party.

32.11 Use of Examination for Discovery at Trial

(1) At the trial of an action, any party may use in evidence, if otherwise admissible, all or any part of the examination for discovery of an adverse party as an admission made by that party.

(2) The evidence of any person examined for discovery on behalf of, or in place of, a party may be used, if otherwise admissible, against that party unless otherwise ordered by the trial judge.

(3) Any examination for discovery may be used at the trial for the purpose of impeaching the testimony of the deponent as a witness in the same manner as any previous inconsistent statement made by a witness may be used.

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(4) Where only part of an examination is introduced into evidence, any adverse party may request the introduction of any other part of the examination which qualifies or explains the part introduced.

(5) Where a party introduces in evidence all or any part of the examination of any adverse party, he may rebut that evidence by introducing any other admissible evidence.

(6) The evidence of a party under disability taken on an examination for discovery may only be used at the trial by leave of the trial judge.

(7) Where the deponent has died or is unable to attend at the trial or to testify because of age, infirmity, illness, or where for any other sufficient reason his attendance cannot be obtained or compelled, the trial judge may allow the examination to be used for any purpose by any party.

(8) An examination for discovery may be used in a subsequent action involving the same subject matter where the parties to the subsequent action include both the party so examined and the examining party or their successors in interest, in the same manner and to the same extent as in the original action.

DISCOVERY

RULE 33 PROCEDURE ON ORAL EXAMINATIONS

33.01 Place of Examination

Where the person to be examined resides in Ontario, the examination shall take place in the county in which he resides, unless the court otherwise orders.

33.02 Where Appointment to be Obtained

Where the person to be examined resides in Ontario, the examining party shall obtain an appointment from an official examiner in the county in which the examination is to take place.

33.03 How Attendance Required

(1) Where the person to be examined is a party to the proceeding, a Notice of Appointment (Form 33A) shall be served upon him personally, unless he has a solicitor of record, in which case the Notice shall be served upon that solicitor.

(2) Where the person to be examined is not a party, he shall be personally served with a Summons to Witness (Form 33B) instead of a Notice of Appointment and paid proper conduct money, unless he is to be examined on behalf of a corporate party and is an officer, director or employee thereof, in which case it shall be sufficient to serve a Notice of Appointment on the solicitor of record for the corporate party.

(3) A Summons to Witness shall be served by leaving a copy thereof with the witness personally and, at the same time, paying or tendering to him the proper conduct money, and it shall not be necessary for the process server to produce the original or have it with him.

33.04 Length of Notice Required

Where the person to be examined resides in Ontario, he shall be given not less than 7 days notice of the time and place of the examination, unless the court otherwise orders.

PROCEDURE ON ORAL EXAMINATIONS

33.05 Notice to Other Parties

Every other party to the proceeding shall be given the same notice of the time and place of the examination as that required to be given to the person being examined.

33.06 Person Examined to be Sworn

(1) The person being examined shall be sworn before he is examined and, where the examination is conducted in Ontario, the oath may be administered by any commissioner for taking affidavits in Ontario.

(2) Where the person being examined does not understand the language or is deaf or mute, it shall be the responsibility of the person being examined to provide, at the expense of the examining party, a competent and independent interpreter who, before the person to be examined is sworn, shall be sworn to accurately interpret the administration of the oath and the questions to be put to the person being examined and his answers thereto.

33.07 Where Person to be Examined Resides out of Ontario

(1) Where the person to be examined resides out of Ontario, the court shall determine,

- (a) the place of examination;
- (b) the person before whom the examination is to be conducted; and
- (c) the length of notice to be given.

(2) Where the person to be examined is not a party, and resides out of Ontario, the court shall fix the amount of conduct money to be paid to him and, if requested, the court shall direct the issuance of a Letter of Request, as provided in Rule 53.

(3) Where the examination is conducted out of Ontario, the oath may be administered by any commissioner appointed by the court for taking evidence out of Ontario, any commissioner for taking affidavits in Ontario, or by any person authorized to take affidavits in the jurisdiction where the examination is conducted.

PROCEDURE ON ORAL EXAMINATIONS RULE 33

33.08 Production of Documents on Examination

(1) The person to be examined shall bring to the examination and produce for inspection all documents in his possession, custody or control, which are not privileged, that he is required to produce by Rule 31.05 (2) or by the Notice of Appointment or the Summons to Witness served upon him, as the case may be.

(2) Where it is not practicable for the person being examined to bring all such documents with him to the examination, he shall make them available for inspection by the examining party at some other mutually convenient time and place prior to the examination.

(3) Where any person admits, upon his examination, that he has in his possession, custody or control any other document relevant to the matters in question in the proceeding, which is not privileged, he shall produce it for inspection by the examining party forthwith, if he has the document with him; and, if not, within 2 days thereafter.

33.09 Re-Examination

Any person being examined or cross-examined may be re-examined at the conclusion of the examination or cross-examination, by his own counsel, or by any party adverse in interest to the examining party, and such re-examination shall be proceeded with immediately after the examination or cross-examination.

33.10 Objections

(1) Where any person being examined objects to answering any question put to him, the question and the nature of the objection and a brief statement of the reason therefor shall be recorded.

(2) Subject to review on a motion to the court, an Official Examiner may make rulings in respect of the conduct of an examination; but, a ruling as to the propriety of any question, to which objection has been taken, may only be obtained by applying to the court.

PROCEDURE ON ORAL EXAMINATIONS RULE 33

(3) Any question objected to may, on consent, be answered subject to the objection, in which case a ruling shall be obtained from the court before such evidence is used at a trial or hearing.

33.11 Protective Order

(1) Any examination may be adjourned by the person being examined or by any party present or represented on the examination for the purpose of applying to the court for directions as to the continuation of it, or for an order terminating the examination or limiting the scope thereof where,

- (a) the right to examine is being abused by an excess of improper questions or interfered with by an excess of improper interruptions or objections;
- (b) the examination is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the person being examined;
- (c) the examination is excessive in length having regard to the nature of the proceeding;
- (d) many of the answers to the questions are evasive, unresponsive or unduly prolix; or
- (e) there has been a neglect or improper refusal to produce any relevant document in the possession, custody or control of the person being examined, which is not privileged, that he was required to produce by these rules or by the Notice of Appointment or the Summons to Witness served upon him, as the case may be.

PROCEDURE ON ORAL EXAMINATIONS RULE 33

(2) On any such motion, the court may order the person whose improper conduct necessitated the motion or the person who improperly brought the motion, as the case may be, to personally pay forthwith the costs of the motion, any costs thrown away and the costs of any continuation of the examination, and fix those costs, or make such other order as may seem just.

33.12 Penalty for Refusal or Neglect

Where any person refuses or neglects to attend at the time and place appointed for his examination or refuses to be sworn, or to answer any proper question, or to produce any document which he is bound to produce, or to comply with any protective order, the court may,

- (a) where any objection is held to be improper, order the person being examined to re-attend at his own expense and answer that question and any proper questions arising from his answer thereto;
- (b) if he is a party, or an officer, director or employee of a corporate party, dismiss the proceeding or strike out the Statement of Defence, as the case may be;
- (c) strike out his evidence, or any part thereof, including any affidavit made by him; and
- (d) make such other order as may seem just.

33.13 Examination to be Recorded

On every examination, the Official Examiner, or his designee, shall record the entire examination in question and answer form, unless the court otherwise orders, or the parties otherwise agree.

PROCEDURE ON ORAL EXAMINATIONS RULE 33

33.14 Typewritten Transcript

(1) Where requested to do so by any party to the proceeding, the Official Examiner, or his designee, shall forthwith prepare a typewritten transcript of the examination.

(2) The transcript shall be certified as correct by the Official Examiner, or by the person recording the examination, but need not be read to or signed by the person being examined.

(3) A copy of the transcript so certified shall be receivable in evidence, if otherwise admissible, without proof of the signature of the Official Examiner or of the person recording the examination.

(4) Forthwith after the transcript is prepared, the Official Examiner shall send one copy thereof to each party to the proceeding who has ordered a transcript and, if requested, provide an additional copy for the use of the court.

33.15 When Transcript to be Filed

(1) A copy of the transcript for the use of the court need only be filed at the trial or hearing of the proceeding and then only where reference is made thereto by any party to the proceeding; provided, however, that where it is intended to make reference thereto on the hearing of any motion or application, a copy of the transcript for the use of the court shall be filed in the Court Office at the place where the motion or application is to be heard, not later than 4 p.m. on the day preceding the hearing thereof.

(2) The transcript of an examination shall not be given to, or read by, the trial judge until reference thereto is made by any party at the trial.

PROCEDURE ON ORAL EXAMINATIONS

RULE 33

33.16 Examinations on Consent

(1) Notwithstanding the foregoing provisions of this rule, the person being examined and all parties to the proceeding entitled to notice of the examination may consent to the time and place of the examination, and to dispense with notice thereof, or they may consent to the length and form of notice to be given.

(2) All of the applicable provisions of this rule shall apply to any such examination, except to the extent that they have been waived by any such consent.

33.17 Application of the Rule

Subject to the provisions of any other rule, the provisions of this rule shall apply to the oral examination or cross-examination, other than in court, of any person or party liable to be so examined under these rules.

DISCOVERY

RULE 34 PROCEDURE ON WRITTEN EXAMINATIONS

34.01 Questions

An examination for discovery by written questions and answers shall be conducted by the examining party serving a list of the questions to be answered upon the party to be examined, and upon every other party.

34.02 Answers

Written questions shall be answered by the affidavit of the party being examined, and that affidavit shall be served on the examining party, and upon every other party within 15 days after service of the list of questions.

34.03 Objections

An objection to answering any question shall be made in the affidavit of the party being examined and a brief statement of the reason therefor shall be stated therein.

34.04 Failure to Answer

(1) Where, upon receipt of the answers, the party examining is not satisfied with the answer to any particular question or where the answer to some particular question suggests a new line of questioning, the examining party may, within 10 days of the receipt of that answer, submit a further list of written questions which shall be answered within 15 days thereafter.

(2) Where the party being examined fails to answer any question or where his answer to any question is insufficient, the court may, upon such terms as may seem just, make an order requiring him to answer such question, or to make a further answer thereto, or to answer any other question either by affidavit or on oral examination.

(3) Where it appears from reading all the answers to the written questions that they are evasive, unresponsive or otherwise unsatisfactory, the court may make an order requiring the party so examined to submit to oral examination upon such terms as to costs or otherwise as may seem just.

**PROCEDURE ON
WRITTEN EXAMINATIONS**

RULE 34

34.05 Penalty for Refusal or Neglect

Where any person refuses or neglects to answer any question properly put to him on a written examination or to produce any document he is bound to produce, he and the party on whose behalf he is being examined shall be liable to the same penalty for such refusal or neglect as in the case of an oral examination.

DISCOVERY

RULE 35 INSPECTION AND PRESERVATION OF PROPERTY

35.01 Order for Inspection

(1) Where the inspection of any real or personal property appears to be necessary for the proper determination of any issue in an action, the court may, upon the motion of any party, make an order for the inspection of any such property by any party or his duly authorized representative.

(2) For the purpose of any such inspection, the court may,

- (a) authorize the entry upon any real property in the possession of any party or in the possession of any person not a party;
- (b) permit the measuring, surveying, or photographing of the property in question, or of any particular object or operation thereon; or
- (c) permit the taking of any samples, the making of any observations or the conducting of any tests or experiments in respect of such property.

(3) The order shall specify the time, place and manner of making the inspection and may prescribe such other terms and conditions, including the payment of compensation, as to the court may seem just.

(4) Where the property to be inspected is in the possession of any person not a party, no order for inspection shall be made without notice to such person, unless the giving of such notice, or the time required to do so, might entail serious consequences to the party seeking the order.

**INSPECTION AND PRESERVATION
OF PROPERTY**

RULE 35

35.02 Order for Preservation

The court may make an order for the custody, detention or preservation of any personal property in question in the action or relevant to any issue in the action and, where any such property is of a perishable nature or likely to deteriorate or for any other reason ought to be sold, the court may order the sale thereof in such manner and upon such terms as to the court may seem just.

35.03 Specific Fund

Where the right of any party to a specific fund is in dispute, the court may order the fund to be paid into court or otherwise secured on such terms, if any, as to the court may seem just.

35.04 Recovery of Personal Property Subject to Lien

Where any party from whom the recovery of personal property is claimed does not dispute the title of the party making the claim, but seeks to retain the property as security for monies alleged to be owing to him, by virtue of a lien or otherwise, the court may order the party claiming recovery of the property to pay into court, or otherwise secure the monies alleged to be owing and such further sum, if any, for interest and costs as the court may direct. Upon compliance with the order, the property in question shall be delivered to the party claiming recovery thereof and the monies in court or the security as furnished shall abide the event of the action.

DISCOVERY

RULE 36 MEDICAL EXAMINATION OF PARTIES

36.01 Definition

For the purpose of this rule, *legally qualified medical practitioner* includes a person licensed to practise dentistry under *The Health Disciplines Act, 1974*.

36.02 Who May be Examined

(1) Where the physical or mental condition of any party to an action is in issue, the court may order him to submit to a physical or mental examination, or both.

(2) Where the initial allegation concerning the physical or mental condition of a party to an action originates in the pleading of an adverse party, an order under paragraph (1) may only be made where the court is satisfied that there is good reason to believe that there is real substance to the allegation and that the allegation is relevant to a material issue in the action.

36.03 Who May Examine

A physical or mental examination of a party ordered by the court under this rule shall be conducted by one or more legally qualified medical practitioners appointed by the court for that purpose.

36.04 Order for Examination

(1) An order for the physical or mental examination of a party shall only be made upon the motion of an adverse party and upon notice to all other parties to the action.

(2) The order shall specify the time, place and scope of the examination, and shall name the medical practitioner or practitioners by whom it is to be made.

(3) The expense of the examination shall be paid by the party obtaining the order but, unless otherwise ordered, such expense and the costs of the motion shall be costs to him in the cause.

(4) The court may order a second examination or further examinations on such terms as to costs or otherwise as may seem just.

MEDICAL EXAMINATION OF PARTIES RULE 36

36.05 Scope of Examination

(1) In conducting an examination pursuant to an order under this rule, the examining medical practitioner may ask the party being examined any questions relevant to the purpose of the examination, and he shall answer all such questions.

(2) Where expressly authorized to do so by an order made under this rule, the examining medical practitioner may,

- (a) examine hospital records and X-rays previously made or taken in respect of the party being examined;
- (b) have samples taken of blood and other body fluids and cause analyses thereof to be made; and
- (c) cause any other test recognized by medical science to be made including, without restricting the generality of the foregoing, X-rays, electrocardiographs, electroencephalographs and psychological tests; provided, however, that no party shall be required to submit to any test which is unduly painful or potentially dangerous.

(3) Unless otherwise ordered, the party to be examined shall deliver to the party obtaining the order, at least 2 days before the day appointed for the examination, a copy of any report made by any medical practitioner who has treated the party to be examined in respect of the mental or physical condition in issue, and the party obtaining the order shall make a copy of every such report available to the medical practitioner appointed to make the examination, before the examination begins.

MEDICAL EXAMINATION OF PARTIES RULE 36

36.06 Who May Attend on Examination

No person other than the person being examined, the examining medical practitioner, his nurse or assistant and a medical practitioner nominated by the person being examined, if any, shall be present at the examination of a party made pursuant to an order under this rule, unless the court otherwise orders.

36.07 Medical Reports

After conducting an examination pursuant to an order under this rule, the examining medical practitioner shall prepare a written report setting out his observations, including the results of any tests made and his conclusions therefrom as well as his diagnosis and prognosis, and shall forthwith deliver the report to the party obtaining the order. Upon receipt thereof, a copy of the report shall be served by the party obtaining the order on every other party to the action.

36.08 Penalty for Failure to Comply

Where a party fails to comply with this rule or with any order made pursuant thereto, he shall be liable, if a plaintiff, to have his action dismissed or, if a defendant, to have his Statement of Defence struck out.

36.09 Examination by Consent

The provisions of this rule shall apply to any physical or mental examination conducted by the consent in writing of the parties, except to the extent that they have been waived by any such consent.

MOTIONS AND APPLICATIONS

RULE 37 JURISDICTION AND PROCEDURE ON MOTIONS

37.01 Notice of Motion

A motion shall be made by a Notice of Motion (Form 37A).

37.02 Jurisdiction to Hear a Motion

(1) *In General*

A judge of the court in which a proceeding is pending has the jurisdiction to hear any motion in the proceeding and, where the proceeding is pending in the Supreme Court, a master, a local judge or a local master may hear a motion in the proceeding, if within his jurisdiction as defined by this rule.

(2) *Jurisdiction of a Master*

- (a) A master has jurisdiction to hear any motion in a proceeding in the Supreme Court for summary judgment or for judgment on consent, unless one of the parties thereto is under disability, and any motion relating to the conduct of the proceeding, except a motion,
 - (i) where the power to grant the relief sought is, by any statute or by these rules, conferred upon a judge;
 - (ii) relating to the liberty of a subject; or
 - (iii) by way of, or in the nature of an appeal.

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- (b) For the purposes of clause (a), *the conduct of the proceeding* means any step in the proceeding, including a motion for interim relief, pending the trial or hearing thereof, and also includes any step in the proceeding after the trial or hearing thereof relating the enforcement of a judgment granted in any such proceeding.
- (c) In addition to his jurisdiction in respect of a motion in a proceeding in the Supreme Court, a master may hear a motion to change the place of trial in a county court action, or to order the consolidation or trial together of proceedings pending in two or more county courts.

(3) *Jurisdiction of a Local Judge*

Except in the Judicial District of York, a local judge has the same jurisdiction as a judge of the Supreme Court to hear any motion in a proceeding in the Supreme Court where the proceeding was commenced in his county or where the solicitor of record for any party to the proceeding practises law in his county or where any party to the proceeding resides in his county or where all the parties to the proceeding consent, except a motion by way of, or in the nature of, an appeal or a motion to vary the judgment of a judge of the Supreme Court.

(4) *Jurisdiction of a Local Master*

A local master has the same power and authority to hear any motion in a proceeding in the Supreme Court as a master where the proceeding was commenced in his county or where the solicitor of record for any party to the proceeding practises law in his county or where any party to the proceeding resides in his county or where all the parties to the proceeding consent.

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37.03 Where a Motion in the Supreme Court May be Brought

(1) *Where Made Without Notice*

A motion made without notice in a proceeding in the Supreme Court may be brought in the county in which the proceeding was commenced or where any party to the proceeding resides or where the solicitor of record for any party to the proceeding practises law.

(2) *Where Made on Notice*

Unless the parties to the motion otherwise agree, a motion made on notice in a proceeding in the Supreme Court shall be brought,

- (a) in the county where the solicitor of record for any respondent to the motion practises law, or, where any respondent is not represented by a solicitor in the county where the respondent resides; or
- (b) where there is no respondent to the motion residing in Ontario or represented by a solicitor of record in Ontario, in the county where the proceeding was commenced or where the solicitor of record for any party to the proceeding practises law.

(3) *Where Brought in the Judicial District of York*

Where a motion in a proceeding in the Supreme Court is properly brought in the Judicial District of York, it shall be made to a master, if within his jurisdiction; and, if not, it shall be made to a judge of the Supreme Court.

(4) *Where Brought Outside the Judicial District of York*

Where a motion in a proceeding in the Supreme Court is properly brought in a county other than the Judicial District of York, it shall be made to a local master of that county, if within his jurisdiction; and, if not, it may be made to a local judge of that county or to a judge of the Supreme Court sitting in that county.

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37.04 Content of Notice

Every Notice of Motion shall state the relief sought, and shall specify with particularity any irregularity complained of or any objection to be relied on, as well as the grounds intended to be argued, including reference to any statutory provision or rule sought to be invoked.

37.05 Service of Notice

(1) Where Required

The Notice of Motion shall be served on any person, including a party to the proceeding, affected by the order sought, unless otherwise ordered.

(2) Where Not Required

- (a) Where the nature of the motion or the circumstances of the case render service of the Notice of Motion impractical or unnecessary, or where the delay necessary to effect such service might entail serious consequences, the court may make an order without notice.
- (b) Where a case of extreme urgency exists, a motion may be made before the commencement of a proceeding upon the undertaking of the applicant to commence the proceeding forthwith.

(3) Where Notice Ought to be Served

Where it appears to the court that the Notice of Motion ought to be served on a person who has not been served, and who may be affected by the order sought, the court may direct that the Notice of Motion, or any order made on the motion, be served on that person in such manner as may seem just.

(4) Time for Service

A Notice of Motion shall be served at least 3 days before the date upon which it is returnable.

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37.06 Filing of Notice

(1) Where the Notice of Motion has been served, or where service thereof is required, it shall be filed with proof of service at least the day before the date upon which it is returnable.

(2) Where service of the Notice of Motion is not required, it shall be filed on or before the hearing thereof.

37.07 Rescinding Orders Made Without Notice

(1) Any person affected by an order made without notice to him or any person who has failed to appear on a motion through accident, mistake or insufficient notice, may apply to rescind or vary the order by Notice of Motion served within 10 days and returnable within 15 days after the order came to his attention.

(2) The motion may be made to the judge or officer who made the order, or to any other judge or officer having jurisdiction.

37.08 Where Motion Brought before Wrong Court, Judge or Officer

A motion improperly brought before any court, judge or officer may be adjourned to the proper court, judge or officer.

37.09 Where Public may be Excluded

(1) A motion may be heard in the absence of the public where,

- (a) the order sought is unopposed or on consent;
- (b) because of urgency, it is impractical to have the motion heard in public; or
- (c) the proceeding relates to the estate or property of a party under disability.

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(2) The hearing of all other motions shall be open to the public unless, in any particular motion, the presiding judge or officer is satisfied that the possibility of serious prejudice or injustice to the parties or any of them outweighs the desirability of holding the hearing in public and endorses upon the Notice of Motion his leave for a hearing in the absence of the public.

(3) Where a motion is heard in the absence of the public, there shall be no publication of any matter connected with the motion or given in evidence at the hearing except by leave of the presiding judge or officer.

37.10 Hearing by Way of Conference Telephone

(1) Notwithstanding the provisions of Rule 37.09, where all counsel on a contested motion and the judge or officer before whom the motion is returnable consent, the motion may be heard on a conference telephone call.

(2) Where a contested motion is to be heard in this manner, counsel for the party bringing the motion shall file with the court and furnish to every other counsel a record containing a copy of all documents relevant to the motion.

37.11 Disposition of Motion

On the hearing of a motion, the presiding judge or officer may allow, dismiss or adjourn the motion either in whole or in part and with or without terms; or, where the motion is heard by a judge, or a local judge, he may direct,

- (a) in a proper case; that the motion be converted into a motion for judgment;
- (b) the trial of an issue with such directions or upon such terms as may seem just; or

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- (c) where the proceeding is an action, that it be placed forthwith, or within a specified time, on a list of cases requiring speedy trial or, where the proceeding is an application, that it be heard at such time and place and upon such terms as may seem just.

37.12 Motions in a Complicated Action or Series of Actions

Where an action in the Supreme Court involves complicated issues or where there are two or more actions in the Supreme Court arising out of the same transaction, occurrence, or series of transactions or occurrences, involving similar issues, the Chief Justice of the High Court may direct that all motions in any such action or actions be heard by a particular judge designated by him.

37.13 Prohibiting Motions Without Leave

Where the presiding judge or officer, on the hearing of any motion, is satisfied that any party is attempting to delay a proceeding or add to the costs thereof, or otherwise abuse the process of the court by multiplicity of frivolous or vexatious motions, he may prohibit any such party from bringing any further motions in the proceeding without leave.

MOTIONS AND APPLICATIONS

RULE 38 JURISDICTION AND PROCEDURE ON APPLICATIONS

38.01 Application of Rule

This rule shall apply to all proceedings commenced by a Notice of Application pursuant to Rule 16.04.

38.02 Jurisdiction to Hear an Application

(1) In General

Unless otherwise provided by any statute, a judge of the court in which an application is commenced has the jurisdiction to hear the application and, where an application in the Supreme Court is made returnable outside the Judicial District of York, the application may be heard by a local judge, if within his jurisdiction as defined by this rule.

(2) Jurisdiction of Local Judge

Except where an application is for judicial review or is required by any statute to be made to a judge of the Supreme Court, a local judge, outside the Judicial District of York, has jurisdiction to hear any application in the Supreme Court commenced in his county; subject to the right of any respondent to the application, within 5 days of the service upon him of the Notice of Application, to obtain from the registrar and serve upon the applicant an Order of Transfer (Form 38A) transferring the application to a judge of the Supreme Court. Where the applicant is served with an Order of Transfer as herein provided, he may only proceed with the application by serving and filing a notice making the application returnable before a judge of the Supreme Court at a place and date for hearing to be obtained as provided in Rule 38.03.

38.03 Place and Date of Hearing in the Supreme Court

(1) An application to a local judge shall be made returnable in the county in which the application is commenced. An application to a judge of the Supreme Court may be made returnable in any county.

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(2) Where an application in the Supreme Court is made returnable in the county in which it is commenced, a date for hearing shall be obtained from the registrar in that county.

(3) Where an application in the Supreme Court is made returnable in a county other than the county in which it is commenced, or where an Order of Transfer has been served upon the applicant, as provided in Rule 38.02, a place and date for the hearing before a judge of the Supreme Court shall be obtained through the registrar in the county where the application was commenced.

(4) Notwithstanding paragraphs (2) and (3), where the application is urgent and a satisfactory date cannot be obtained from the registrar, the application may be made returnable on any date that a local judge or a judge of the Supreme Court, as the case may be, is sitting for the hearing of applications in the county where the applicant proposes the application be heard.

38.04 Issuing of Notice

Every Notice of Application shall be issued as provided by Rule 16.06 before it is served.

38.05 Content of Notice

Every Notice of Application shall state the relief sought and shall specify with particularity the nature of any claim made or any question sought to be determined, as well as the grounds intended to be argued, including reference to any statutory provision or rule sought to be invoked.

38.06 Service of Notice

(1) Where Required

The Notice of Application shall be served on all parties to the proceeding and, where there is doubt as to who should be served, the applicant may apply to a judge, without notice, for an order for directions.

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(2) *Where Not Required*

Where the nature of the application or the circumstances of the case render service of the Notice of Application impractical or unnecessary, or where the delay necessary to effect such service might entail serious consequences, the judge may make an order without notice.

(3) *Where Notice Ought to be Served*

When it appears to the judge that the Notice of Application ought to be served on a person who has not been served, and who may be affected by the order sought, the judge may direct that the Notice of Application or any order made on the application be served on the person in such manner as may seem just.

(4) *Time for Service*

A Notice of Application shall be served within the time prescribed by Rule 16.07.

38.07 Record

Where an application on notice is made returnable before a judge of the Supreme Court, the applicant shall, on or before the day prior to the hearing of the application, deposit with the registrar a record for the use of the court consisting of,

- (a) an index;
- (b) a copy of the Notice of Application; and
- (c) a copy of all affidavits or other material filed for use on the hearing of the application.

38.08 Rescinding Orders Made Without Notice

(1) Any person affected by an order made without notice to him, or any person who has failed to appear on an application through accident, mistake or insufficient notice, may apply to rescind or vary the order by Notice of Motion served within 10 days and returnable within 15 days after the order came to his attention.

(2) The motion may be made to the judge who made the order or to any other judge having jurisdiction.

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38.09 Where Application Brought in Wrong Court

(1) Any application improperly brought before any court, judge or officer may be transferred or adjourned to the proper court, judge or officer.

(2) Where any application is transferred to another court, the proceeding shall thereafter be styled in the court to which it is transferred and shall be proceeded with as if it had been commenced in that court.

38.10 Where Public may be Excluded

The provisions of Rule 37.09 shall apply, with any necessary modification, to any proceeding commenced by a Notice of Application.

38.11 Disposition of Application

(1) On the hearing of an application, the presiding judge may,

(a) allow, dismiss or adjourn the application, either in whole or in part and with or without terms; or

(b) where he is satisfied that there is substantial dispute of fact, direct that the whole application proceed to trial or direct the trial of any particular issue or issues and, in either case, give such directions and impose such terms as may seem just.

(2) Subject only to the directions and terms contained in the order directing the trial, the proceeding shall thereafter be treated as an action.

38.12 Application to Divisional Court

The provisions of this rule shall apply, with any necessary modification, to an application to the Divisional Court.

MOTIONS AND APPLICATIONS

RULE 39 EVIDENCE ON MOTIONS AND APPLICATIONS

39.01 By Affidavit

(1) Evidence upon a motion or application may be given by affidavit unless otherwise provided.

(2) Where a motion or application is made on notice, any affidavit in support of the motion or application shall be served with the Notice of Motion or Notice of Application, as the case may be. All affidavits to be used upon the hearing shall be served and filed with proof of service, not later than 4 p.m. on the day preceding the hearing.

(3) Where a motion or application is made without notice, it shall be sufficient to file any affidavit in support of the motion or application on or before the hearing thereof.

(4) Except in the case of a motion for summary judgment under Rule 22, an affidavit for use upon a motion need not be confined to statements of fact within the knowledge of the deponent, but may contain statements as to his information and belief, provided the source of his information and his belief therein are specified in the affidavit.

(5) An affidavit for use upon an application shall be confined to facts within the personal knowledge of the deponent; provided, however, that the affidavit may contain statements as to the information and belief of the deponent with respect to facts which are not contentious, where the source of his information and his belief therein are specified in the affidavit.

39.02 By Examination of a Witness

(1) *Prior to the Hearing*

A person who is not a party to the proceeding may be examined prior to the hearing of a motion or application for the purpose of having a transcript of his evidence available for use upon the hearing thereof.

**EVIDENCE ON MOTIONS
AND APPLICATIONS**

RULE 39

(2) *On the Hearing*

A person may be orally examined or cross-examined on the hearing of a motion or application, but only with leave of the presiding judge or officer.

39.03 Cross-examination on Affidavit

(1) *Made for Use upon a Motion*

- (a) Any party to a motion who has delivered every affidavit upon which he intends to rely, may cross-examine the deponent of any affidavit delivered by or on behalf of the opposite party.
- (b) Where a party has cross-examined under clause (a), he shall not deliver any additional affidavit for use on the hearing of the motion without leave or consent; and such leave may be granted where the court is satisfied that he ought to be permitted to respond by affidavit to any matter raised on the cross-examination.
- (c) Any party who cross-examines the deponent of any affidavit delivered by or on behalf of the opposite party for use upon a motion, shall be liable for the party and party costs of the opposite party in respect of such cross-examination in any event of the cause, unless otherwise ordered by the court.
- (d) Where the party who cross-examines orders a transcript of such cross-examination, he shall serve a copy thereof on the opposite party, free of charge.
- (e) Cross-examination on an affidavit delivered for use upon a motion for summary judgment is governed by Rule 22.03.

**EVIDENCE ON MOTIONS
AND APPLICATIONS**

RULE 39

(2) Made for Use upon an Application

Where a person has made an affidavit for use upon an application, he may be cross-examined thereon, unless otherwise ordered.

(3) To be Exercised with Reasonable Diligence

The right to cross-examine under paragraphs (1) and (2) shall be exercised with reasonable diligence, and the court may refuse an adjournment of a motion or application for the purpose of cross-examination where the party seeking the adjournment has failed to do so.

PRESERVATION OF RIGHTS

PENDING LITIGATION

RULE 40 INTERLOCUTORY INJUNCTION OR MANDATORY ORDER

40.01 On Motion to a Judge

A motion for an interlocutory injunction or mandatory order, or for an extension thereof, shall be made to a judge of the court in which the proceeding is pending, or in which the intended proceeding is to be brought.

40.02 Where Motion Made Without Notice

(1) Where the motion is made without notice, an injunction may only be granted for a period not exceeding 10 days.

(2) Where an injunction is granted on a motion made without notice, a motion to extend the injunction may only be made on notice to any party affected by the order unless it can be shown that any such party has been evading service or that, by reason of some other exceptional circumstances, the injunction ought to be extended, in which case the extension shall be confined to a period not exceeding a further 10 days.

40.03 Undertaking

On a motion for an interlocutory injunction or mandatory order, the plaintiff or applicant, by his counsel, shall, unless otherwise ordered, undertake to abide by any order as to damages which the court may make should it ultimately appear that the defendant or respondent has sustained any loss by reason of the granting of the order which the plaintiff or applicant ought to pay.

**PRESERVATION OF RIGHTS
PENDING LITIGATION**

RULE 41 APPOINTMENT OF RECEIVER

41.01 On Motion to a Judge

A motion for the appointment of a receiver, or receiver and manager, shall be made to a judge of the court in which the proceeding is pending, or in which the intended proceeding is to be brought.

41.02 Form of Order

The order appointing a receiver, or receiver and manager, shall,

- (a) name the person so appointed or refer the appointment thereof to a master;
- (b) specify the amount and terms of the security, if any, to be furnished by him for the proper performance of his duties or refer the determination thereof to a master;
- (c) state whether the person appointed as receiver is also appointed as manager and, if necessary, define the scope of his managerial powers; and
- (d) contain such directions and impose such terms and conditions as may seem appropriate.

41.03 Directions

A receiver, or receiver and manager, may apply to a judge for directions at any time and from time to time.

41.04 Discharge

A receiver, or receiver and manager, may only be discharged by the order of a judge.

**PRESERVATION OF RIGHTS
PENDING LITIGATION**

RULE 42 CERTIFICATE OF PENDING LITIGATION

42.01 Leave to Issue Required

A certificate of pending litigation may only be issued by a registrar pursuant to an order of the court.

42.02 Where Motion may be Made Without Notice

Where a claim for a certificate of pending litigation together with a description, sufficient for registration, of the lands in question, has been included in the originating process, a motion for leave to issue a certificate of pending litigation may be made without notice.

42.03 Where Motion to be Made on Notice

Where the originating process does not include a claim for a certificate of pending litigation, a motion for leave to issue a certificate of pending litigation shall be made on notice and the Notice of Motion shall contain a description, sufficient for registration, of the lands in question.

**PRESERVATION OF RIGHTS
PENDING LITIGATION**

RULE 43 INTERPLEADER

43.01 By Stakeholder

Where a person is under liability for any debt, money, goods or chattels, in respect of which adverse claims have been made against him by two or more persons, either by the commencement of proceedings or otherwise, he may apply to the court for relief by way of interpleader.

43.02 By Sheriff

(1) A person, who makes a claim to or in respect of any property taken or intended to be taken by a sheriff in the execution of any process against another person or to the proceeds thereof, shall give notice to the sheriff of his claim and his address for service.

(2) On receipt of a claim, the sheriff shall forthwith give Notice of Claim (Form 43A) to the execution creditor who shall, within 7 days after receiving the notice, give the sheriff notice in writing whether he admits or disputes the claim.

(3) On receipt of a notice admitting a claim, the sheriff shall release any property the claim to which is admitted, and the court may restrain the bringing of a proceeding against him for or in respect of his having taken possession of the property and, unless the court otherwise orders, the execution creditor who admits the claim is only liable to the sheriff for any costs, fees and expenses incurred by the sheriff before receipt of the notice admitting the claim.

(4) On receipt of a notice disputing the claim, or on the failure of the execution creditor to give the sheriff the required notice within the time prescribed, the sheriff may apply for relief by way of interpleader.

INTERPLEADER

RULE 43

(5) Where goods or chattels have been seized in execution by a sheriff, and any claimant alleges that he is entitled to such property by way of security for a debt, the court may order a sale of the property and direct that the proceeds therefrom, or sufficient to answer the claim, be paid into court pending determination of such claim.

43.03 Mode of Application

(1) An application for interpleader relief shall be made by Notice of Application, unless it is made in a proceeding already commenced, in which case it shall be made by Notice of Motion and, in either case, the notice shall call upon the claimants to attend on the return of the application and either to maintain or relinquish their claim.

(2) An application for interpleader relief shall be supported by an affidavit made by the applicant showing the names and addresses of all claimants to the property in question of whom the applicant has knowledge and that the applicant,

- (a) claims no beneficial interest in the property in question, other than a lien for costs, fees, charges or expenses;
- (b) does not collude with any claimant of the property; and
- (c) is willing to deliver the property in question to the court or to dispose of it as the court may direct.

(3) Notice of an application for interpleader relief shall be served upon every claimant in respect of the property in question and, except in the case of an application by a sheriff, upon every party to the proceeding.

INTERPLEADER

RULE 43

(4) Where the applicant is a sheriff, and there is more than one execution creditor in respect of the property in question, he shall make one application and shall serve notice of the application upon all execution creditors as well as upon every claimant.

(5) Where the applicant is a sheriff, notice of the application shall include the following notice:

NOTICE TO EXECUTION CREDITORS

TAKE NOTICE that Section 5 (4) of *The Creditors Relief Act* provides that:

Where proceedings are taken by a sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute *pro rata* in proportion to the amount of their executions or certificates to the expense of contesting any adverse claim are entitled to share in any benefit that may be derived from the contestation of such claim so far as is necessary to satisfy their executions or certificates.

(6) Where a sheriff has an execution issued from the Supreme Court, he shall make the application for interpleader relief in the Supreme Court, notwithstanding that he may have other executions issued from county or small claims courts.

(7) Every person served with notice of an application pursuant to this rule is deemed to be a party to the application.

43.04 Jurisdiction on Application

On the hearing of an application for interpleader relief the court may,

- (a) order a claimant to be made a party in a proceeding already commenced in substitution for or in addition to the applicant;

INTERPLEADER

RULE 43

- (b) order the trial of an issue between the claimants, define the issue to be tried and direct which claimant is to be plaintiff and which defendant;
- (c) where the issue is one of law and the facts are not in dispute, decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court;
- (d) on the request of any claimant, if, having regard to the value of the subject matter and the nature of the issues in dispute, it seems desirable to do so, determine the rights of the claimants in a summary manner;
- (e) where a claimant fails to attend on the application, or attends and fails or refuses to comply with an order made in the proceeding, make an order declaring the claimant and all persons claiming under him to be forever barred from prosecuting his claim against the applicant and all persons claiming under him, without affecting the rights of the claimants as between themselves;
- (f) stay any further step in a proceeding;
- (g) order the costs of the applicant to be paid out of the property or proceeds;
- (h) declare that the liability of the applicant in respect of the property or the proceeds is extinguished;
- (i) make such other order as may seem just.

PRESERVATION OF RIGHTS
PENDING LITIGATION

RULE 44 INTERIM RECOVERY OF PERSONAL PROPERTY

44.01 Motion for Interim Order

(1) An interim order for the recovery of personal property may be obtained on a motion by the plaintiff supported by affidavit containing,

- (a) a sufficient description of the property sought to be recovered to render it readily identifiable;
- (b) the value of the property sought to be recovered;
- (c) a statement that the plaintiff is the owner or lawfully entitled to possession of the property, as the case may be;
- (d) a statement that the property was unlawfully taken from the possession of the plaintiff or unlawfully detained by the defendant, as the case may be; and
- (e) the facts and circumstances giving rise to the unlawful taking or unlawful detention.

(2) A Notice of Motion shall be served on the defendant unless the court is satisfied that the property was unlawfully taken from the plaintiff or that there is reason to believe that the defendant may attempt to prevent recovery of the property or that, for any other sufficient reason, the order should be made without notice.

44.02 Interim Order

An interim order for the recovery of personal property shall contain a sufficient description of the property to be recovered as to make it readily identifiable, and shall state the value of the property.

**INTERIM RECOVERY OF
PERSONAL PROPERTY**

RULE 44

44.03 Jurisdiction on Motion

(1) *Where Made on Notice*

On a motion for an interim order for the recovery of personal property made on notice to the defendant, the court may,

- (a) order the plaintiff to pay into court twice the value of the property as stated in the order or such other amount as the court may direct, or to give the appropriate sheriff security in such form and amount as may be approved by the court, and direct the sheriff to take the property from the defendant and deliver it to the plaintiff;
- (b) order the defendant to pay into court twice the value of the property as stated in the order, or such other amount as the court may direct, or to give to the plaintiff security in such form and amount as may be approved by the court, and allow the property to remain in the possession of the defendant; or
- (c) make such other order as may seem just.

(2) *Where Made Without Notice*

On a motion for an interim order for the recovery of personal property made without notice to the defendant, the court may,

- (a) order the plaintiff to pay into court twice the value of the property as stated in the order, or such other amount as the court may direct, or to give the appropriate sheriff security in such form and amount as may be approved by the court, and direct the sheriff to take and detain the property for a period of 10 days after service of the interim order upon the defendant before delivering it to the plaintiff; or

**INTERIM RECOVERY OF
PERSONAL PROPERTY**

RULE 44

(b) make such other order as may seem just.

44.04 Condition and Form of Security

Where an interim order for the recovery of personal property requires either party to provide security, the condition of the security shall be that the party providing the security will return the property to the opposite party without delay should he be ordered to do so, and pay any damages and costs the opposite party may have sustained by reason of the interim order. Where the security is by bond, it shall be according to Form 44A and shall remain in force until the security is released pursuant to this rule.

44.05 Rescinding Order

The defendant may apply to the court at any time to rescind or vary an interim order for the recovery of personal property, or to stay proceedings thereunder, or for any other relief with respect to the return, safety or sale of the property or any part thereof by Notice of Motion served within 10 days and returnable within 15 days after the order came to his attention.

44.06 Release of Security

Any security furnished pursuant to an order made under this rule may be released on the filing of the written consent of the parties or by order of the court.

44.07 Duty of Sheriff

(1) Before a sheriff proceeds to enforce an order for the recovery of personal property, he shall satisfy himself that the plaintiff, or the defendant, has furnished any security required by the order.

(2) The sheriff shall serve the interim order on the defendant as soon as possible after the property or any part thereof has been recovered.

**INTERIM RECOVERY OF
PERSONAL PROPERTY**

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(3) Where the sheriff is unable to comply with the order, or it is dangerous for him to do so, he may apply to the court for directions.

(4) Upon the expiration of 10 days after the service of the order, the sheriff shall report without delay to the plaintiff as to the property he has recovered, and, where he has failed to recover possession of all or part of the property, as to the property he has failed to recover and the reason therefor.

44.08 Where Property Removed

Where the sheriff reports that the defendant has prevented him from recovering the property or any part thereof, the plaintiff may apply for an order directing the sheriff to take any other personal property of the defendant, to the value of the property which the sheriff was prevented from recovering, and deliver it to the plaintiff who shall hold it until the defendant delivers the property in question to him.

SETTING ACTIONS DOWN FOR TRIAL

RULE 45 PLACE OF TRIAL

45.01 To be Named in Statement of Claim

The plaintiff shall name as the place of trial in his Statement of Claim the place where the court normally sits in the county in which he proposes that the action shall be tried.

45.02 Supreme Court Actions

Subject to any special statutory provisions, where the action is commenced in the Supreme Court, the place of trial to be named shall be regulated as follows:

- (a) Where all the parties reside in the county where the cause of action arose, the place to be named shall be in that county.
- (b) Where the action is against a municipal corporation, the place to be named shall be in the county that constitutes that municipality or in which that municipality is situate.
- (c) In any other action, the place to be named may be in any county.

45.03 County Court Actions

Subject to any special statutory provisions, the place of trial to be named in a county court action shall be regulated by the rule governing the place of trial in a Supreme Court action and the action shall be commenced in the county in which the action is to be tried.

PLACE OF TRIAL

RULE 45

45.04 Motion to Change the Place of Trial

(1) Any party may apply to the court at any time to change the place of trial. Except where the choice of the plaintiff is contrary to the rules or clearly capricious, the applicant must show that it would be more convenient to have the action tried at the place proposed by him or that, in the interests of justice, the action ought to be tried at that place.

(2) In a county court action, a motion to change the place of trial may be made to the judge of the county court in which the action was commenced or to a master of the Supreme Court. Where such an order is made, the action shall be transferred to the appropriate county court. Thereafter, the action shall be styled in the court to which the proceeding is transferred and shall be proceeded with as if it had been commenced in that court.

(3) On any motion to change the place of trial, no agreement made prior to the commencement of an action as to the place of trial shall have any force or effect.

SETTING ACTIONS DOWN FOR TRIAL

RULE 46 JURY NOTICE

46.01 Actions Which may be Tried With a Jury

Subject to the provisions of any statute, any party desiring to have the issues of fact tried or the damages assessed by a jury may, at any time before the close of pleadings, serve on every other party to the action and file, with proof of service, a Jury Notice (Form 46A) in which case, unless otherwise ordered, the facts shall be tried or the damages assessed accordingly.

46.02 Striking Out Jury Notice

(1) Where a Jury Notice has been served in an action required by statute to be tried without a jury, any party to the action may apply to the court for an order striking out such notice.

(2) Where a Jury Notice has been served and filed pursuant to Rule 46.01, any party may apply to a judge at any time for an order striking out the notice. Where it appears to the judge that the action is one which ought to be tried without a jury he shall make an order striking out the notice, and, in case the action has been placed on a list of jury actions for trial, he shall order the action to be transferred to a list of non-jury actions for trial. The refusal of such an order shall not interfere with the discretion of the trial judge, in a proper case, to try the action without a jury.

SETTING ACTIONS DOWN FOR TRIAL

RULE 47 PROCEDURE ON SETTING DOWN

47.01 When Action may be Set Down and by Whom

At any time after the close of pleadings, any party to an action, including a party to any counterclaim or cross-claim in the action who is not himself in default under these rules, or under any order of the court, may set the action, including any counterclaim or cross-claim therein, down for trial.

47.02 How Action is to be Set Down

(1) Where an action is defended, the action may be set down for trial by,

- (a) serving on every other party and filing a Notice of Trial (Form 47A) with proof of such service; and
- (b) filing a record prepared in accordance with the requirements of Rule 4.09.

(2) Where an action is undefended, the action may be set down for trial by filing the record required by paragraph (1)(b).

47.03 Placing Undefended Action on List for Trial

An undefended action shall be placed on the list for the trial of undefended actions forthwith after it has been set down for trial.

47.04 Placing Defended Action on List for Trial

A defended action shall be placed on the list for the trial of defended actions with or without a jury, as the case may be, when,

- (a) 60 days have elapsed from the date the action was set down for trial; or
- (b) forthwith upon the filing of a consent in writing by every other party.

PROCEDURE ON SETTING DOWN

RULE 47

47.05 Effect of Setting Down or Consent

(1) Any party who sets the action down for trial and any party who consents to the action being placed on the list for trial shall, by virtue of so doing, be deemed to have certified that he is ready for trial and he shall not initiate or continue any motion or any form of discovery without leave of the court.

(2) Nothing in paragraph (1) shall relieve a party from any obligation imposed upon him by Rules 31.07, 31.09, 32.09 and 52.01, or preclude him from resorting to the provisions of Rules 31.10, 47.12 and 51.01.

47.06 Effect of Action Being Placed on List for Trial

As soon as an action is placed on the list for trial, all parties shall be deemed to be ready for trial and, subject to any order made under Rule 47.05, no party shall be entitled to an adjournment of the trial on the ground that some interlocutory proceeding or some form of discovery has not been initiated or completed.

47.07 Position of Actions on List for Trial

When an action is entitled to be placed on a list for trial in accordance with this rule, it shall be placed at the foot of the appropriate list.

47.08 Separate Lists for Trial

Actions to be tried with a jury shall be placed on a list of jury actions for trial and actions to be tried without a jury shall be placed on a list of non-jury actions for trial; provided, however, that in the case of actions to be tried elsewhere than at Toronto, non-jury actions shall be placed at the end of the list of jury actions for trial when the next scheduled sitting is for the trial of jury actions only.

47.09 Separate List for Actions Requiring Speedy Trial

There shall be a separate list of cases requiring speedy trial on which only those cases in respect of which a speedy trial has been ordered shall be listed.

PROCEDURE ON SETTING DOWN

47.10 Actions Traversed or Remaining on List at Conclusion of Sittings

Unless otherwise ordered by the trial judge, all actions traversed to the next sittings and all actions remaining on the list for trial at the conclusion of any sittings shall stand in the same order at the head of the next appropriate list of actions for trial, and it shall not be necessary to again set the action down for trial or serve and file another Notice of Trial.

47.11 Actions Struck off List

Where an action is struck off the list, it shall not be restored to any list for trial except by leave of a judge, but any such action may be re-set down for trial and a new Notice of Trial served and filed, with proof of service.

47.12 Fixing Date for Trial in Special Cases

(1) Where an action has been set down for trial and there is some special reason why the date for trial ought to be fixed, any party may apply to the Chief Justice of the High Court, or to anyone designated by him, by serving and filing, with proof of service, a Request to Fix Date for Trial (Form 47B).

(2) Any party served with a Request to Fix Date for Trial may, within 10 days thereafter, serve and file, with proof of service, a Response to Request to Fix Date for Trial (Form 47D).

(3) Such a request may be made jointly by all parties to the action by filing a Joint Request to Fix Date for Trial (Form 47C).

(4) If the Chief Justice of the High Court, or his designee, is not satisfied that he can dispose of the request without hearing counsel, he may appoint a time for the making of oral representations.

PROCEDURE ON SETTING DOWN

RULE 47

(5) Where a request is made under this sub-rule, the request and the disposition thereof by the Chief Justice, or his designee, shall be attached by the registrar to the original record.

(6) In county court actions, such a request shall be made to the county court judge, or his designee.

47.13 Application of Rule

(1) The provisions of this rule shall apply to any proceeding wherein the court has directed the trial of an issue, unless otherwise ordered.

(2) Except as provided in Rule 47.11, the provisions of this rule shall not apply where the court has ordered an action to be placed on a list of actions requiring speedy trial.

47.14 Duty to Inform Registrar

Every party to an action set down for trial shall promptly inform the registrar as to any settlement of the action.

PREPARATION FOR TRIAL

RULE 48 PAYMENT INTO COURT IN SATISFACTION

48.01 Where Available

In any action a defendant may pay into court a sum of money in satisfaction of any claim made by a plaintiff, or, where there is more than one claim, in satisfaction of any one or more of them.

48.02 Time for Payment into Court

(1) Except where tender before action is pleaded, payment into court in satisfaction may be made at any time before the commencement of the trial; provided, however, that where such payment into court is made less than 10 days before the day on which the trial commences, it shall have no effect on the costs of the action unless, in the meantime, it has been accepted by the plaintiff.

(2) Where tender before action is pleaded, the sum alleged to have been tendered shall be paid into court forthwith.

48.03 Notice of Payment into Court

On making a payment into court under this rule, a defendant shall forthwith serve upon the plaintiff a Notice of Payment into Court (Form 48A) which shall specify the claim or claims in respect of which such payment is made and the amount of such payment in respect of each claim, but such Notice shall not be filed.

48.04 When Payment into Court may be Revoked

(1) Except where tender before action is pleaded, a payment into court is irrevocable for a period of 10 days from the date of service of the Notice of Payment into Court but, unless and until accepted by the plaintiff, any such payment may thereafter be revoked by the defendant serving upon the plaintiff a Notice of Revocation (Form 48B) at any time before the commencement of the trial.

(2) Where tender before action is pleaded, a payment into court is irrevocable.

**PAYMENT INTO COURT
IN SATISFACTION**

RULE 48

(3) Where a Notice of Revocation has been served, the payment into court so revoked shall have no effect on the costs of the action.

(4) Upon filing a Notice of Revocation with proof of service thereof upon the plaintiff, the defendant shall be entitled to have the money in court paid out to him.

48.05 Effect of Payment into Court

Except in an action in which a payment is made under *The Libel and Slander Act*, or in which tender before action is pleaded,

- (a) payment into court under this rule shall be deemed to be an offer of compromise made without prejudice and shall not be taken as an admission of liability for the claim in respect of which it is made, unless the Notice of Payment into Court otherwise provides; and
- (b) no statement of the fact that money has been paid into court under this rule shall be contained in the pleadings, and no communication of that fact shall be made to the trial judge or the jury until all questions of liability and the amount of debt or damages have been decided.

48.06 Notice of Acceptance

Where money is paid into court under this rule, the plaintiff may accept the whole sum, or any one or more of the specified sums, in satisfaction of the claim or claims to which the specified sum or sums relate by serving upon the defendant and filing, with proof of service, a Notice of Acceptance (Form 48C).

48.07 Time for Acceptance

Notice of Acceptance may be served and filed at any time before the commencement of the trial unless, in the meantime, the payment into court has been revoked by the defendant.

**PAYMENT INTO COURT
IN SATISFACTION**

RULE 48

48.08 Effect of Acceptance

(1) Subject to paragraph (2), where the plaintiff accepts the money paid into court in satisfaction of all claims in the action, the plaintiff may tax his party and party costs of the action to the date he was served with the Notice of Payment into Court and, unless the defendant pays those costs within 7 days after taxation, issue execution therefor.

(2) Where the defendant has pleaded tender before action and the plaintiff accepts the money paid into court in satisfaction of all claims made in the action, the defendant may, unless otherwise ordered, tax his party and party costs of the action and the amount thereof shall be paid to him out of the money in court, and the balance shall be paid to the plaintiff.

(3) Where the money paid into court in satisfaction has been accepted, all further proceedings in the action or in respect of the specified claim or claims, as the case may be, shall be stayed and the money shall not be paid out except upon the filing of an affidavit of the plaintiff, or his solicitor, that the plaintiff is not under disability and is personally entitled to the money, or by the order of a judge.

48.09 Effect of Failure to Accept

(1) Where money is paid into court under this rule and the plaintiff does not accept the sum so paid in satisfaction of the claim in respect of which the payment into court was made, but proceeds with the action in respect of such claim,

- (a) the money shall remain in court, unless the payment into court has been revoked, and shall not be paid out except upon filing the consent of all parties and an affidavit by the party to whom payment out is to be made, or his solicitor, that such party is not under disability and is personally entitled to the money, or by the order of a judge; and

**PAYMENT INTO COURT
IN SATISFACTION**

RULE 48

- (b) the amount paid into court shall be applied, so far as is necessary, in satisfaction of any judgment recovered by the plaintiff against the defendant, and the balance, if any, shall be repaid to the defendant.

(2) Where a Notice of Payment into Court was served at least 10 days before the day on which the trial commenced and the payment into court has not been revoked, a plaintiff, who fails to obtain judgment for more than the amount paid into court, shall only be entitled to his party and party costs to the date of service of the Notice of Payment into Court and the defendant shall be entitled to his party and party costs from the date of such service, unless the trial judge otherwise orders.

48.10 Interest on Money in Court

Any defendant who has made a payment into court under this rule is entitled to the interest earned on that payment while it remained in court, unless that payment is not sufficient to satisfy the judgment obtained by the plaintiff, in which case the plaintiff is entitled to the whole or any part of such interest as may be necessary to satisfy his judgment, unless otherwise ordered.

48.11 By Multiple Defendants

(1) Where two or more defendants are jointly, or jointly and severally, liable to the plaintiff in respect of any particular claim or claims, any payment into court in satisfaction of any such claim or claims shall be deemed to have been made by, or on behalf of, all such defendants and Notice of Payment into Court shall be served on all of the other defendants as well as upon the plaintiff.

(2) The acceptance of any such payment by the plaintiff shall release all such defendants from any further liability to the plaintiff in respect of such claim or claims.

48.12 Application to Counterclaim

The provisions of this rule shall apply, with any necessary modification, to any counterclaim.

PREPARATION FOR TRIAL

RULE 49 OFFER TO SETTLE

49.01 Definitions

In this rule,

plaintiff includes an applicant;

defendant includes a respondent.

49.02 Where Available

Any party to a proceeding may serve upon an adverse party an offer in writing to settle any claim in a proceeding and, where there is more than one claim, to settle any one or more of them, on the terms therein specified.

49.03 Time for Making Offer

An offer to settle may be made at any time before the court disposes of the claim or claims in respect of which the offer is made; provided, however, that where such offer to settle is made less than 10 days before the day on which the trial or hearing of the proceeding is commenced, the cost consequences prescribed by this rule shall not apply thereto unless, in the meantime, it has been accepted.

49.04 When Offer to Settle may be Revoked

(1) An offer to settle may be revoked by the party who made the offer serving upon the party to whom the offer was made a notice of revocation at any time before it is accepted.

(2) Where an offer to settle stipulates a time for acceptance and is not accepted within the time so stipulated, it shall be deemed to have been revoked.

(3) The cost consequences prescribed by this rule shall not apply to an offer to settle which has been revoked.

OFFER TO SETTLE

RULE 49

49.05 Effect of Offer

(1) An offer to settle shall be deemed to be an offer of compromise made without prejudice, and shall not be taken as an admission of liability, unless the offer to settle otherwise provides.

(2) No statement of the fact that an offer to settle has been made shall be contained in the pleadings, and no communication of that fact shall be made to the court or jury on the trial or hearing of the proceeding until after all questions of liability and the relief to be granted have been decided.

49.06 Acceptance of Offer

Where an offer to settle has been served, the party to whom the offer is made may accept such offer by serving notice of acceptance on the party who made the offer.

49.07 Time for Acceptance

A notice of acceptance may be served at any time before the court disposes of the claim or claims in respect of which the offer is made, unless, in the meantime, the offer has been revoked.

49.08 Effect of Acceptance

(1) Where any party to an accepted offer to settle fails to comply with the terms thereof, the other party may, subject to the provisions of paragraph (2), apply to the court,

(a) for judgment in the terms of the accepted offer; or

(b) where the defaulting party is a plaintiff, to have his proceeding dismissed or, where the defaulting party is a defendant, to have his defence to the proceeding struck out.

(2) Where the accepted offer to settle is the settlement or compromise of a claim made by or on behalf of a person under disability, the provisions of paragraph (1) shall not apply until the settlement or compromise has been approved as provided in Rule 7.07.

OFFER TO SETTLE

RULE 49

(3) Where the accepted offer is silent as to costs, and the offer was made by the defendant and accepted by the plaintiff, the plaintiff may tax his party and party costs of the proceeding to the date he was served with the offer to settle and, unless the defendant pays those costs within 7 days after taxation, issue execution therefor.

(4) Where the accepted offer is silent as to costs, and the offer was made by the plaintiff and accepted by the defendant, the plaintiff may tax his party and party costs of the proceeding to the date he was served with the notice of acceptance and, unless the defendant pays those costs within 7 days after taxation, issue execution therefor.

49.09 Effect of Failure to Accept

(1) Where an offer to settle was made by a plaintiff at least 10 days before the day on which the trial or hearing of the proceeding commenced and the offer has not been revoked, a plaintiff who obtains a judgment as favourable, or more favourable, than the terms of the offer to settle, shall be entitled to his party and party costs to the date of the service of the offer to settle and his solicitor and client costs thereafter, unless otherwise ordered.

(2) Where an offer to settle was made by a defendant at least 10 days before the day on which the trial or hearing of the proceeding commenced and the offer has not been revoked, a plaintiff who fails to obtain a judgment more favourable than the terms of the offer to settle shall only be entitled to his party and party costs to the date of the service of the offer to settle and the defendant shall be entitled to his party and party costs from the date of such service, unless otherwise ordered.

OFFER TO SETTLE

RULE 49

49.10 Multiple Defendants

Where two or more defendants are jointly, or jointly and severally, liable to the plaintiff in respect of any particular claim or claims, the cost consequences prescribed by Rule 49.09 shall not apply to an offer to settle, unless,

- (a) in the case of an offer made by the plaintiff, the offer is made to all such defendants, and is an offer to settle such claim or claims as against all such defendants; or
- (b) in the case of an offer made to the plaintiff, the offer is made by all such defendants and is an offer to settle such claim or claims against all such defendants and, by the terms of the offer, they are made jointly and severally liable to the plaintiff for the whole amount of the offer.

49.11 Discretion of Court

Notwithstanding the provisions of this rule, the court, in exercising its discretion as to costs, may take into account any offer to settle made in writing, the date the offer to settle was served and the terms thereof.

49.12 Offer to Contribute

(1) Where two or more defendants are jointly, or jointly and severally liable to the plaintiff in respect of any particular claim or claims, any one of such defendants may make an offer in writing to any other such defendant to contribute toward a settlement of such claim or claims.

(2) The provisions of Rules 49.05 and 49.11 shall apply to an offer to contribute as if it were an offer to settle.

49.13 Application to Counterclaims, Cross-Claims or Third Party Claims

The provisions of this rule shall apply, with any necessary modification, to any counterclaim, cross-claim or third party claim.

PREPARATION FOR TRIAL

RULE 50 PRE-TRIAL CONFERENCE

50.01 Where Available

Where a proceeding has been set down for trial or hearing, a judge may, on the application of any party, or on his own motion, direct the solicitors for the parties, either with or without the parties, or any party not represented by a solicitor, to appear before him for a pre-trial conference to consider,

- (a) the simplification of the issues;
- (b) the possibility of obtaining admissions that may facilitate the trial or hearing;
- (c) the quantum of damages, where damages are claimed;
- (d) the estimated duration of the trial or hearing;
- (e) the advisability of having the court appoint an expert;
- (f) the advisability of obtaining a fixed date for the trial or hearing;
- (g) the advisability of directing a reference; and
- (h) any other matter that may assist in the just, least expensive and most expeditious disposition of the proceeding on its merits.

50.02 Memorandum or Order

At the conclusion of the conference, counsel may sign a memorandum reciting the results of the conference and the court may make an order giving such directions as it considers necessary or advisable, and any such memorandum or order shall bind the parties, provided that the judge at the trial or hearing may modify the order as he deems just.

PRE-TRIAL CONFERENCE

RULE 50

50.03 Pre-Trial Judge Cannot be Trial Judge

A judge does not become seized of the proceeding by presiding at the pre-trial conference, but he is thereafter disqualified from presiding at the trial or hearing unless otherwise directed by the Chief Justice of the High Court.

50.04 Documents to be Made Available

All documents intended to be used at the trial or hearing and which may be of assistance in achieving the purposes of a pre-trial conference, such as medical reports and reports of experts, shall be made available to the pre-trial judge.

50.05 Costs of Pre-Trial Conference

The pre-trial judge may make an order as to the costs of the pre-trial conference but, in the absence of such an order, the costs thereof shall be costs in the cause.

50.06 Proviso

Nothing in this rule shall prevent a judge before whom a proceeding has been called for trial or hearing from holding such a conference either before or during the trial or hearing without disqualifying himself from presiding at the trial or hearing provided, however, that, unless expressly consented to by all parties, there shall be no discussion as to,

- (a) the discharge of the jury;
- (b) the settlement of liability; or
- (c) the quantum of damages.

PREPARATION FOR TRIAL

RULE 51 REQUEST FOR ADMISSION

51.01 Admission of Fact

Any party to an action may, at least 20 days before the trial, serve on any adverse party a request for admission in writing of the truth of any relevant facts specified in the request.

51.02 Effect of Request

Within 10 days after service of the request, the party to whom the request is directed shall serve upon the party requesting the admission a written answer or objection thereto. If objection is made, the reasons therefor shall be stated.

51.03 Effect of Admission

(1) Any fact admitted under this rule is conclusively established unless the court permits withdrawal or amendment of the admission.

(2) The admission of any fact under this rule may be used only in the action in respect of which it is made.

51.04 Effect of Refusal or Failure

Where any party refuses or fails to admit any fact in compliance with a request under this rule, and such fact is subsequently proved at the trial, the trial judge shall take such refusal or failure into account in exercising his discretion as to costs.

PREPARATION FOR TRIAL

RULE 52 EXPERT WITNESS

52.01 Condition Precedent to Calling Expert Witness at Trial

(1) Any party intending to call an expert witness at trial shall, not less than 10 days prior to the commencement of the trial, serve upon every other party to the action, a copy of a report, signed by the expert, setting out his name, address and qualifications and the substance of his proposed testimony.

(2) Unless paragraph (1) of this sub-rule has been complied with, no expert witness may testify without leave of the trial judge.

52.02 Examination of Expert Witness Before Trial

(1) Where, for any reason, it may be impractical or inconvenient for an expert witness to attend the trial of an action, the party intending to call that witness may, with leave of the court, or on the consent of all parties and at his own expense, examine that witness before the trial for the purpose of taking his evidence for use at the trial.

(2) Before applying to the court for leave to conduct an examination under this sub-rule, the applicant shall comply with the requirements of Rule 52.01.

(3) Unless otherwise ordered or provided by this rule, the procedure prescribed by Rule 33 shall apply to the examination of any witness under this sub-rule.

(4) On the examination of a witness under this sub-rule, he may be examined, cross-examined and re-examined in the same manner as a witness at trial.

(5) An order or consent for the examination of a witness under this sub-rule may provide that the examination be recorded by videotape or other similar means either in addition to or in substitution for a typewritten transcript.

EXPERT WITNESS

RULE 52

(6) Where the evidence has been transcribed, the party whose witness has been so examined shall serve every party who attended, or was represented on the examination, with a copy of the transcript, free of charge.

(7) A transcript or videotape or other similar recording of such evidence shall be admissible at the trial, unless the court otherwise orders, as the evidence of the expert witness so examined, saving all just exceptions, and may be tendered in evidence by any party to the action who attended, or was represented, on the examination.

(8) Where the evidence of an expert witness has been taken pursuant to the provisions of this sub-rule, he shall not be called to give evidence at the trial, except with leave of the trial judge, or where the trial judge has required his attendance at the trial.

52.03 Medical Expert

(1) Subject to compliance with Rule 52.01, a medical report prepared and signed by a medical or dental practitioner, licensed to practise in some part of Canada is, with leave of the court, admissible in evidence at trial, provided that at least 10 days notice of intention to introduce the report in evidence has been given to every other party.

(2) Where any such medical or dental practitioner has been required to attend and give oral evidence at or before trial and the court is of the opinion that his evidence could have been introduced as effectively by way of a medical report, the court may order the party who required the attendance of the medical or dental practitioner to pay the costs of his attendance.

PREPARATION FOR TRIAL

RULE 53 TAKING EVIDENCE PRIOR TO TRIAL

53.01 Where Available

(1) By order of the court, or by consent of the parties, a person may be examined on oath before trial for the purpose of having a deposition of his testimony available to tender as evidence at the trial.

(2) An order may be made under paragraph (1) where the court is satisfied that material evidence may be obtained from a person,

- (a) who may not be able to attend or testify at the trial by reason of illness, age or other infirmity;
- (b) whose attendance at the trial may not be compelled by reason of his absence from Ontario; or
- (c) who resides out of Ontario and it is impossible to procure his attendance or impractical to do so by reason of the expense involved.

53.02 Procedure

(1) Unless otherwise ordered or provided by this rule, the procedure prescribed by Rule 33 shall apply to the examination of any witness under this rule.

(2) On the examination of a witness under this rule, he may be examined, cross-examined and re-examined in the same manner as a witness at trial.

(3) An order or consent for the examination of a witness under this rule may provide that the examination be recorded by videotape or other similar means either in addition to or in substitution for a typewritten transcript.

**TAKING EVIDENCE
PRIOR TO TRIAL**

RULE 53

53.03 Examination Out of Ontario

(1) Where an order is made under this rule for the examination of a witness out of Ontario, the order shall provide for,

- (a) the issuance of a Commission (Form 53A) authorizing the taking of such evidence before the Commissioner therein named; and, if requested,
- (b) the issuance of a Letter of Request (Form 53B) directed to the appropriate authority in the jurisdiction in which the witness is to be found, requesting the issuance of such process as may be necessary to compel that witness, or any other witness who may be examined under this rule, to attend and submit to examination before the Commissioner.

(2) The examination of a witness out of Ontario shall take the form of oral questions and answers, unless some other form of examination is required by the order or by the law of the place where the examination is conducted.

(3) At the conclusion of the examination of a witness ordered to be examined under this rule, the Commissioner shall, on the consent of all parties, allow any other witness who is to be found in the same jurisdiction to be examined before him.

53.04 Use at Trial

(1) A deposition taken under this rule shall be admissible at trial, unless the court otherwise orders, as the evidence of the witness so examined, saving all just exceptions, and may be tendered in evidence by any party to the action.

(2) Where the evidence of a witness has been taken pursuant to this rule, he shall not be called to give evidence at the trial, except with leave of the trial judge.

TRIALS

RULE 54 TRIAL PROCEDURE

54.01 Failure to Attend at Trial

(1) Where an action is called for trial and all of the parties fail to attend, the trial judge may strike the action off the list.

(2) Where an action is called for trial and any party fails to attend, the trial judge may,

- (a) proceed with the trial in the absence of that party;
- (b) where the plaintiff attends and the defendant fails to attend, allow the plaintiff to prove his claim and dismiss the counterclaim, if any;
- (c) where the defendant attends and the plaintiff fails to attend, dismiss the claim and allow the defendant to prove his counterclaim, if any; or
- (d) make such other order as may seem just.

(3) Any judgment obtained against any party who failed to attend at the trial may be set aside by a judge on such terms as may seem just where the motion is brought without undue delay and the failure to attend is satisfactorily explained. Unless the failure to attend was through no fault of the applicant, he shall be required to satisfy the judge that there is a triable issue.

54.02 Adjournment of Trial

A judge may at any time postpone or adjourn a trial to such time and place, and upon such terms as may seem just.

TRIAL PROCEDURE

RULE 54

54.03 Court Experts

(1) On the application of any party, a judge may, at any time, appoint one or more independent experts to inquire and report on any question of fact or opinion relevant to any issue in the action.

(2) The court expert shall be named by the judge and, where possible, shall be an expert agreed upon by the parties.

(3) The order shall contain the instructions to be given to the expert and the judge may, from time to time, make such further orders as he deems necessary to enable the court expert to carry out his instructions, including the examination of any party or property and the making of experiments and tests.

(4) The judge may direct the court expert to make a further supplementary report.

(5) A copy of the report of any expert appointed by the court shall be sent to each of the parties, and the original shall be filed as evidence at the trial of the action.

(6) Any party may, at the trial, cross-examine the expert on his report.

(7) Where a court expert is appointed, any party may call one expert to give evidence on any question of fact or opinion reported on by the court expert, but no party may call more than one such witness without leave of the court.

(8) The remuneration of a court expert shall be fixed by the judge, and shall include a fee for his report and a proper sum for each day that he is required to attend at trial.

(9) Where a court expert is appointed, the liability of the parties for the payment of his remuneration shall be determined by the judge.

TRIAL PROCEDURE

RULE 54

(10) Where an application by any party for the appointment of a court expert is opposed, the judge may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the court expert as may seem just.

54.04 Exhibits

(1) Exhibits shall be marked and numbered consecutively, and the registrar attending the trial shall make a list of the exhibits, giving a description of each exhibit, and stating by whom it was put in evidence and, where the person from whose possession it came is other than a party, the name and identity of that person.

(2) At any time following the trial judgment, any party may apply to the registrar for delivery of all or any of the exhibits upon filing the consent of all parties represented at the trial.

(3) Subject to the preceding paragraph, the exhibits shall remain in the custody or control of the registrar,

- (a) until the time for taking an appeal to the Court of Appeal has expired; or
- (b) where an appeal is taken to the Court of Appeal and has been disposed of, until the time for taking an appeal to the Supreme Court of Canada has expired; or
- (c) where an appeal is taken to the Supreme Court of Canada, until it is disposed of.

(4) Upon the expiration of the time for appeal or on the disposition of the appeal, the registrar shall, unless otherwise ordered, return the exhibits to the respective solicitors or record for the parties who put the exhibits in evidence at the trial and those solicitors shall return the exhibits to the persons from whose possession they came.

TRIAL PROCEDURE

RULE 54

54.05 View by Judge or Jury

The judge, or the judge and jury, by whom any action is being tried, or the court before whom any appeal is being heard, may, in the presence of the parties or their counsel, inspect any real or personal property concerning which any question arises in the action, or the place where the cause of action arose, where such a view may facilitate the understanding of the evidence.

54.06 Exclusion of Witnesses

(1) Subject to paragraph (2), the trial judge may, and at the request of any party shall, exclude any witness from the courtroom until called to give evidence.

(2) An order excluding witnesses from the courtroom shall not apply to a party to the action or to any witness whose presence is essential to instruct counsel for the party calling him, but the trial judge may require any such party or witness to give his evidence before any other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding a witness from the courtroom, he shall not have any communication with any witness who has testified during his absence from the courtroom until after the witness so excluded has been called and has given his evidence.

(4) Nothing in this sub-rule shall preclude the trial judge from excluding any person from the courtroom who is interfering with the proper conduct of the trial or who is otherwise improperly conducting himself.

54.07 Order of Presentation

(1) On the trial of an action with a jury, the order of presentation, unless otherwise directed by the trial judge, shall be regulated as follows:

- (a) The plaintiff shall be allowed to make his opening address first and, subject to clause (b), immediately thereafter adduce whatever evidence he may wish to call;

TRIAL PROCEDURE

RULE 54

- (b) Where the defendant so request, he may, by leave of the trial judge, make his opening address immediately after the opening address of the plaintiff, and before the plaintiff adduces any evidence;
 - (c) When the evidence adduced on behalf of the plaintiff is concluded, the defendant may make his opening address, unless he has already done so, and then proceed to adduce whatever evidence he may wish to call;
 - (d) When the evidence adduced on behalf of the defendant is concluded, the plaintiff may proceed to adduce whatever evidence he may properly call in reply and, at the conclusion thereof, the defendant shall make his closing address followed by the closing address of the plaintiff;
 - (e) Where the defendant calls no evidence at the conclusion of the evidence adduced on behalf of the plaintiff, the plaintiff shall make his closing address followed by the closing address of the defendant.
- (2) Where the burden of proof in respect of all matters in issue in the action lies on the defendant, the trial judge may reverse the order of presentation.
- (3) Where there are two or more defendants separately represented, the order of presentation shall be as directed by the trial judge.
- (4) Where a party is represented by counsel, the right to address the jury shall be exercised by his counsel.

TRIAL PROCEDURE

RULE 54

54.08 Disagreement of the Jury

(1) Where the jury disagrees, or makes no finding upon which judgment can be granted, the trial judge may,

- (a) on the application of the defendant, dismiss the action on the ground that there is no evidence to warrant a judgment for the plaintiff, or that for any other reason he is not entitled to judgment; or
- (b) direct that the action be re-tried at the same sittings by a jury selected from a new panel or at any subsequent sittings.

(2) Where a jury is directed to answer questions, and answers some but not all, or where the answers are conflicting so that judgment cannot be granted upon such findings, the action shall be re-tried as in the case of a disagreement.

54.09 Omission to Prove a Fact or Document

Where through accident or mistake or other cause, any party omits or fails to prove some fact or document material to his case,

- (a) the judge may proceed with the trial subject to the fact or document being afterwards proved at such time and upon such terms as he may direct; or
- (b) where the case is being tried by a jury, the judge may direct the jury to find a verdict as if the fact or document had been proved, and the verdict shall take effect on the fact or document being afterwards proved as directed, and, if not so proved, judgment shall be granted to the opposite party, unless the judge otherwise directs.

TRIAL PROCEDURE

RULE 54

54.10 Assessment of Damages

Where damages are to be assessed in respect of,

- (a) any continuing cause of action;
- (b) repeated breaches of recurring obligations; or
- (c) intermittent breaches of a continuing obligation,

the damages shall be assessed down to the time of assessment, including damages for breaches occurring after the commencement of the proceeding.

TRIALS

RULE 55 EVIDENCE AT TRIAL

55.01 Evidence by Witnesses

(1) Unless otherwise provided by these rules, witnesses at the trial of an action may be orally examined, cross-examined and re-examined under oath.

(2) The trial judge shall exercise reasonable control over the mode of interrogation of a witness so as to protect the witness from undue harassment or embarrassment and may disallow any question put to a witness that is vexatious or irrelevant to any matter which may properly be inquired into at the trial.

(3) The trial judge may at any time direct that a witness be recalled for further examination.

(4) Where a witness appears to be evasive, the trial judge may permit the party calling that witness to examine him by means of leading questions relevant to the matters in issue.

(5) Where a witness does not understand the language in which the trial is being conducted, or is a deaf or mute person, it shall be the responsibility of the party calling that witness to provide a competent interpreter who, before the witness is sworn or examined, shall be sworn to accurately interpret the administration of the oath, the questions to be put to the witness and his answers thereto.

55.02 Evidence by Affidavit

(1) Before or at the trial of an action, the court may make an order, upon such terms as may seem just, allowing the evidence of any witness to be given by affidavit or any particular fact or document to be proved by affidavit, unless an adverse party requires the attendance of the deponent at trial for cross-examination.

EVIDENCE AT TRIAL

RULE 55

(2) Where an order is made under paragraph (1) prior to the trial, it may be revoked or varied by the trial judge where it appears necessary to do so in the interests of justice.

(3) At the trial of an undefended action, the evidence by or on behalf of the plaintiff may be given by affidavit unless, in any particular case, the trial judge requires the plaintiff to call oral evidence.

55.03 Compelling Attendance at Trial

(1) Where a party requires the attendance of any person in Ontario as a witness at a trial, he may serve him with a Summons to Witness (Form 55A) requiring him to attend the trial at the time and place stated therein, and any such summons may also require him to produce at the trial all documents in his possession, custody or control relating to the matters in question in the action or such documents relating thereto as may be particularly specified therein.

(2) On the request of any party, or his solicitor, and on payment of the prescribed fee, a registrar shall issue a Summons to Witness signed by him under the seal of the court and that party or his solicitor shall complete the summons as the circumstances may require and may insert therein the names of any number of witnesses.

(3) No Summons to Witness for the production of an original record or document that may be proved by a certified copy shall be served without leave of the court.

(4) A Summons to Witness shall be served by leaving a copy thereof with the witness personally and, unless he is a party, at the same time paying or tendering to him the proper conduct money, and it shall not be necessary for the process server to produce the original or have it in his possession.

(5) Service of a Summons to Witness and the payment or tender of any conduct money may be proved by affidavit.

EVIDENCE AT TRIAL

RULE 55

(6) A Summons to Witness continues to have effect until the conclusion of the sittings for which the attendance of the witness is required.

(7) Where a witness fails to attend at the trial of an action or to remain in attendance in accordance with the requirements of a Summons to Witness duly served upon him, and the presence of that witness is material to the ends of justice, the presiding judge may, by his Warrant (Form 55B) directed to all sheriffs and other peace officers in the Province of Ontario, cause such witness to be apprehended anywhere within Ontario and forthwith brought before the court. Upon being so apprehended, he may be detained in custody until his presence as such witness is no longer required, or released on such terms as the court may order, and he may be ordered to pay the costs arising out of his failure to attend or remain in attendance.

55.04 Compelling Attendance of Witness in Custody

The court may order the issue of a Writ of *Habeas Corpus Ad Testificandum* (Form 55C), directing the sheriff, jailer or other officer having the custody of a prisoner, to produce him for any examination authorized by these rules or as a witness at a trial.

55.05 Calling Adverse Party as a Witness

(1) A party intending to call as a witness at the trial an adverse party, or any officer or director of a corporation that is an adverse party, may either serve him with a Summons to Witness or serve on the adverse party or his solicitor, at least 10 days before trial, notice of his intention to call him as a witness.

(2) A party may call as a witness an adverse party, or any officer or director of a corporation that is an adverse party, in attendance at the trial, unless the adverse party has already testified on his own behalf, or undertakes to do so, or, where the adverse party is a corporation, the officer or director has already testified, or counsel for the corporation undertakes to call him as a witness.

EVIDENCE AT TRIAL

RULE 55

(3) A party calling an adverse party, or any officer or director of a corporation that is an adverse party, as a witness, may cross-examine him.

(4) If a person required to testify pursuant to this sub-rule refuses or neglects to attend at the trial or to remain in attendance at the trial or refuses to be sworn or to answer any proper question put to him or to produce any document which he is required to produce, the court may pronounce judgment in favour of the party calling that witness, adjourn the trial, or make such other order as may seem just.

REFERENCES

RULE 56 DIRECTING A REFERENCE

56.01 Where a Reference May be Directed

Subject to any right to have any issue tried with a jury, a judge may, at any time,

- (a) direct a reference to determine any question or issue arising in a proceeding, or refer the whole proceeding for trial where,
 - (i) all parties, who are not under disability, consent;
 - (ii) a prolonged examination of documents or a scientific or local investigation is required that, in the opinion of the judge, cannot conveniently be made by the trial judge or a jury; or
 - (iii) a substantial issue in dispute requires the taking of an account;
- (b) direct a reference for the taking of any accounts or the making of any inquiries in connection with the conduct of a sale, the appointment of a committee, guardian or receiver, or the enforcement of any judgment.

56.02 To Whom Reference May be Directed

(1) In a Supreme Court proceeding, a reference may be directed to a local judge, a master, a local master or to a referee agreed upon by the parties.

(2) In a county court proceeding, a reference may be directed to the local master, to the clerk of the court or to a referee agreed upon by the parties. Where the judge directing the reference is a local master, the reference may be directed to himself.

DIRECTING A REFERENCE

RULE 56

(3) Where a reference is directed to a referee, he shall be deemed to be, for the purposes of the reference, an officer of the court directing the reference.

(4) The judge directing any reference to a referee shall determine his remuneration and the liability of the parties for the payment thereof.

56.03 Judgment or Order of Reference

In addition to defining the nature and subject matter of the reference, the judgment or order of reference may contain directions as to the conduct of the reference and may designate which party is to have carriage of the reference.

56.04 Motions on a Reference

Any person to whom a reference has been directed shall hear and dispose of any motion made in connection with the reference, provided, however, that in his absence or with his consent such a motion may be heard and disposed of by any judge, local judge, master or local master of the court in which the reference was directed.

56.05 Report on Reference

Any person to whom a reference has been directed shall make his findings and embody his conclusion in the form of a report.

56.06 Confirmation of Report

(1) A report shall have no effect until it has been confirmed.

(2) Where a judgment or order directing a reference does not require the person to whom the reference is directed to report back to the judge directing the reference or to a judge of that court, the report shall be deemed to be confirmed upon the expiration of 15 days after a copy of the report, with proof of service thereof on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced unless a notice of appeal is served within that time.

DIRECTING A REFERENCE

RULE 56

(3) Where the judgment or order directing a reference requires the person to whom the reference is directed to report back to the judge directing the reference or to a judge of that court, the report may only be confirmed on a motion for judgment and there shall be no right of appeal from the report itself, but an appeal may be taken from the disposition of the motion for judgment.

56.07 Appeal from Report

(1) Where the whole proceeding has been referred for trial or hearing, an appeal from the report shall be to the Divisional Court.

(2) In every other case where there is a right of appeal from a report, the appeal shall be,

- (a) to a judge of the High Court, where the proceeding is in the Supreme Court; or
- (b) where the proceeding is in a county court, to a judge of that court, unless the reference was directed to a judge of that court as local master in which case the appeal shall be to a judge of the High Court.

(3) An appeal from a report shall be on notice setting out the grounds of appeal, served within 15 days after a copy of the report, with proof of service thereof on every party who appeared on the reference, has been filed in the office in which the proceeding was commenced.

(4) Except as provided in paragraph (3), where the appeal is to the Divisional Court, the applicable provisions of Rule 62 shall apply as if the appeal was from a judgment.

(5) Where the appeal is to a judge of the High Court it shall be made returnable within 30 days after the filing of the report and the provisions of Rule 63.02 shall apply as if the appeal was from an interlocutory judgment or order.

REFERENCES

RULE 57 PROCEDURE ON A REFERENCE

57.01 Conduct of Reference

Any person to whom a reference has been directed shall,

- (a) subject to any directions contained in the judgment or order of reference, conduct the reference in the least expensive and most expeditious manner and, to that end, he shall give such directions as may seem necessary and he may dispense with any proceeding ordinarily taken which he considers to be unnecessary or adopt a procedure different from that ordinarily taken;
- (b) report any special circumstances and shall generally inquire into, decide and report on all matters relating thereto, as fully as if they had been specifically referred to him; and
- (c) conduct the reference, as nearly as may be, in accordance with the practice and procedure on a reference before a master, and for that purpose, he shall have the same power and authority as a master.

57.02 Practice and Procedure on a Reference before a Master

(1) The party having carriage of the reference shall forthwith proceed to take out the judgment or order of reference and, within 10 days thereafter, apply to the master for an appointment to consider the reference and, in default thereof, any other party having an interest in the reference may assume carriage of the reference.

(2) On the return of the appointment, the master shall give such directions for the conduct of the reference as may seem just including,

- (a) the time and place at which the reference is to proceed;

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(b) any special directions as to the parties who are to attend; and

(c) any special directions as to how the evidence is to be received.

(3) Any such directions may be varied or supplemented during the course of the reference as to the master may seem just.

(4) Unless otherwise directed by a master or required by these rules, at least 5 days notice of the reference, together with a copy of the judgment or order of reference, shall be served upon every other party to the action.

(5) Where it appears to the master that any person ought to be added as a party to the action, the master may make an order adding him as a party defendant and direct that a copy of such order, together with a copy of the judgment or order of reference and a Notice to an Added Party (Form 57A) be served on such person, who thereupon shall be treated and named as a party to the action and shall be bound as if he had been an original party thereto.

(6) A person so served may apply to a judge at any time within 10 days from the date of such service to discharge, add to, vary or set aside the judgment or order of reference or the order adding him as a party.

(7) The master may grant leave to make any necessary amendments to the pleadings which are not inconsistent with the judgment or order of reference as may seem just.

(8) Where it appears to the master that two or more parties have substantially similar interests, he may require such parties to be represented by the same solicitor; and, where those parties cannot agree upon the choice of a solicitor to represent them, the master may designate a solicitor for that purpose upon such terms as may seem just.

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(9) The master shall keep in his office a Procedure Book in which he shall note all proceedings taken before him and all directions given by him in respect of the reference, and such directions need not be embodied in a formal order to bind the parties attending on the reference.

(10) Where a reference cannot be completed in one day, it shall be adjourned to the following day, if possible. Where this is not possible, the master shall note the adjournment in his Procedure Book, together with the reason therefor and shall, if possible, fix the time when it is to be resumed.

(11) Where the party having carriage of the reference does not proceed with reasonable diligence, the master may, upon the motion of any other interested party, transfer to him the carriage of the reference.

(12) The master may require any party to be examined and to produce such documents as he thinks fit and may give directions for their inspection by any other party.

(13) When the hearing of the reference is completed, the master shall fix a day to settle his report and notice thereof shall be served upon all parties who have appeared upon the reference unless such notice is dispensed with.

(14) In a proceeding for the administration of the estate of a deceased person, the report shall, as far as possible, be according to Form 57B.

(15) Where the master has made a ruling with respect to the admissibility of evidence or otherwise during the course of the reference he shall, on the request of any party, set out in his report his ruling and the reasons therefor.

(16) Any ruling made by the master on a reference shall not be subject to appeal during the course of the reference, except by leave of the master. Where such leave is granted, the master shall set out his ruling in an interim report.

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(17) The party having carriage of the reference shall prepare a draft report and present it to the master to settle on the day fixed therefor.

(18) When the report is settled and signed by the master, the party having carriage of the reference shall forthwith serve a copy thereof on all parties appearing on the reference and file a copy thereof with proof of such service.

(19) While a reference is pending before the master, all documents relating thereto shall be filed with the master and, upon completion of the reference, such documents shall be sent to the office in which the action was commenced for filing in the court file.

57.03 Taking of Accounts

(1) On the taking of accounts, the master may,

- (a) take account of money, rents and profits received or which, but for wilful neglect or default, might have been received;
- (b) make allowance for occupation rent, and determine the amount thereof;
- (c) take into account necessary repairs, lasting improvements, costs and other expenses properly incurred; and
- (d) make all just allowances.

(2) Where an account is to be taken, the accounting party, unless the master otherwise directs, shall prepare the account in debit and credit form, verified by affidavit, and the items on each side of the account shall be numbered consecutively, and the account shall be referred to in the affidavit as an exhibit and shall not be annexed thereto.

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(3) The master may direct that the books of account in which the amounts required to be taken have been kept, or any of them, be taken as *prima facie* evidence of the truth of the matters therein contained.

(4) Before proceeding to the hearing of a reference, the master may appoint a day for the purpose of taking the accounts and may direct the production and inspection of vouchers and, if deemed proper, cross-examination of the accounting party on his affidavit with a view to ascertaining what is admitted and what is contested between the parties.

(5) Where any party questions an account he shall give to the accounting party particulars of his objection thereto with specific reference to the item in question by number, and the master may require him to give further particulars of any such objection.

57.04 Making of Inquiries

(1) The master may cause advertisements for creditors or for heirs or next-of-kin, or other unascertained persons, and for the representatives of such as are deceased, to be published.

(2) In any such advertisement, the master shall appoint a time and place for filing the claims of any such persons and the advertisement shall notify them that, unless their claims are so filed, they will be excluded from the benefit of the order.

(3) Before the day appointed by the master to consider the claims filed pursuant to any such advertisement, the executor, administrator or trustee, or such other person as the master directs, shall examine such claims and file an affidavit verifying a list of the claims sent in pursuant to the advertisement and stating which of them he believes should be disallowed and the reasons for such belief.

(4) If any claim is contested, the master shall require Notice of Contestation (Form 57C) to be served upon the claimant fixing a day for adjudication upon the claim.

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57.05 Execution or Delivery of Deed or Conveyance

Where any person refuses or neglects to execute or deliver any deed or conveyance as directed by any judgment or order of reference, the master may give direction as to the execution or delivery thereof.

57.06 Direction for Payment of Money

(1) Where pursuant to any judgment or order of reference the master directs any money to be paid at any specified time and place, he shall direct it to be paid into a bank to the credit of the party to whom it is made payable or to the joint credit of the party to whom it is made payable and the Accountant.

(2) Where money is directed to be paid to the credit of the party to whom it is made payable, he may name the bank into which he desires it to be paid and it may be paid out without an order.

(3) Where money is paid to the joint credit of the party and the Accountant, the Accountant shall sign the cheque for payment out upon the production of the consent of the party paying in, duly verified by affidavit, or by his solicitor, or in the absence of such consent, upon the order of the master.

(4) Where it appears that any money in court belongs to a minor, the master shall require evidence of the age of the minor and shall, in his report, state the date of birth of any such minor.

(5) Where any judgment or order of reference or any report directs the payment of money out of court to creditors, the person having carriage of the reference shall deposit with the Accountant a copy of such judgment, order or report, and shall give a Notice (Form 57D) to each creditor that payment of his claim, as allowed, may be obtained from the Accountant.

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57.07 Conduct of Sale

(1) Where a sale is ordered, the master may cause the property to be sold either by public auction, private contract or tender, or part by one mode and part by another, as may seem just.

(2) Where a property is directed to be sold by auction or by tender, the party having the conduct of the sale shall prepare a draft advertisement pursuant to the instructions of the master showing,

- (a) the short style of cause;
- (b) that the sale is pursuant to a judgment or order of the court;
- (c) the time and place of the sale;
- (d) a short description of the property to be sold;
- (e) the manner in which the property is to be sold, whether in one lot or several and, if in several, in how many, and in what lots;
- (f) what proportion of the purchase money is to be paid down by way of deposit, and at what time or times, and whether the residue of such money is to be paid with or without interest;
- (g) that the sale is subject to a reserve bid, if such is the case; and
- (h) the proposed conditions of sale.

(3) The proposed conditions of sale shall be those set forth in Form 57E, subject to such modification as to the master may seem just.

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(4) Upon the return of the appointment to give directions for the sale, the master shall settle the advertisement, fix the time and place of sale, name an auctioneer, where one is to be employed, give directions for publication of the advertisement and for the obtaining of appraisals, fix a reserve bid, if any, and make all other necessary arrangements for the sale.

(5) All parties may bid except the party having the conduct of the sale and any trustee, agent or other person in a fiduciary position to him. Where the party having the conduct of the sale wishes to bid, the master may transfer the conduct of the sale to another party or to any other person appointed by him.

(6) Where no auctioneer is employed, the master or his clerk shall conduct the sale.

(7) The deposit required by the conditions of sale shall be paid to the party having the conduct of the sale or his solicitor at the time of sale and shall forthwith be paid by him into court in the name of the purchaser.

(8) Where a contract of sale is made through an auctioneer, the auctioneer shall make an affidavit as to the result of the sale. Where no auctioneer is employed, the master shall enter the result in his Procedure Book and, in either case, the master may make an interim report on the sale (Form 57F).

(9) Objection to the sale shall be by way of appeal from the report on the sale and notice of the appeal shall be served upon all parties to the reference and upon the purchaser who shall be deemed to be a party for the purpose of any such appeal.

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(10) The purchaser may pay his purchase money or the balance thereof into court without order, and, after the expiration of the time for appeal from the report on the sale, upon notice to the party having the conduct of the sale, he may, if he so desires, obtain a vesting order. Where possession is wrongfully withheld from the purchaser, either the purchaser or the party having the conduct of the sale may apply for an order against any party in possession.

(11) The purchase money shall not be paid out of court except upon consent of the purchaser or his solicitor or upon proof to the Accountant that the purchaser has received a conveyance or vesting order of the property for which the money in question was paid into court.

(12) No conveyance shall be settled until evidence is produced of the purchase money having been paid into court and, where a mortgage is taken for part of the purchase money, until evidence is given to the master of such mortgage having been registered and deposited with the Accountant.

57.08 Appointment of Committee, Guardian or Receiver

(1) Where, by any judgment or order of reference, a master is directed to appoint a committee, guardian or receiver, the master shall not report on such appointment until he has settled and approved any security required by the judgment or order and until such security has been duly filed with the Accountant.

(2) Where, by any judgment or order of reference or report, the person so appointed is required to pass his accounts or to pay his balances into court, and is in default of compliance with such direction, the master may, on the passing of accounts, disallow any compensation and may charge such person with interest on his balances.

C O S T S

RULE 58 SECURITY FOR COSTS

58.01 Where Available

In any action a plaintiff may be ordered to furnish security for costs where it appears that,

- (a) he is ordinarily resident out of Ontario;
- (b) the defendant has a judgment or order against the plaintiff for costs in another action, and those costs remain unpaid in whole or in part;
- (c) he is a nominal plaintiff, and there is good reason to believe that he has not sufficient assets in Ontario to pay the costs of the defendant if ordered to do so;
- (d) it is a corporation, and there is good reason to believe that it has not sufficient assets in Ontario to pay the costs of the defendant if ordered to do so; or
- (e) the defendant is entitled by any statute to security for costs.

58.02 Time for Making Motion

A motion for security for costs may be made to the court at any time after the defendant has delivered his Statement of Defence and before the action is placed on the list for trial.

58.03 Amount and Form of Security and Time for Furnishing

The amount and form of the security and the time for paying into court or otherwise furnishing the required security shall be determined by the court.

SECURITY FOR COSTS

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58.04 Form and Effect of Order

An Order for Security for Costs (Form 58A) shall have the effect of staying all proceedings in the action from the date the order is served until the amount of security required has been furnished, unless otherwise provided.

58.05 Default of Plaintiff

Where a plaintiff defaults in furnishing the security required by such an order, the defendant who obtained the order may apply for an order dismissing the action with or without costs, as may seem just.

58.06 Amount May Be Varied

The amount of security required by an order for security for costs may be increased or decreased by the court at any time and from time to time.

58.07 Notice of Compliance

Upon furnishing the security required by such an order, the plaintiff shall forthwith give notice of his compliance to the defendant who obtained the order and to every other party.

58.08 Payment Out

Any monies paid into court as security for costs may be paid out on the consent of the solicitors for the parties concerned without order, and may be paid to the solicitor for either party upon production of the consent of his client verified by affidavit. Where the money has been paid into court by or on behalf of an insurer of one or more of the parties, the consent of the client may be given by such insurer.

58.09 Effect of Rule

Notwithstanding the provisions of this rule, any party to a proceeding may be ordered to furnish security for costs where, by these rules or otherwise, the court has a discretion to impose terms as a condition of granting him relief.

COSTS

RULE 59 COSTS OF PROCEEDINGS BETWEEN PARTY AND PARTY

59.01 Authority of the Court

Nothing in this rule shall be construed so as to interfere with the authority of the court or a judge,

- (a) to fix the costs of any proceeding, or any step therein, with or without reference to any tariff, instead of referring them for taxation;
- (b) to allow or refuse costs in respect of some particular issue or part of a proceeding;
- (c) to allow a percentage of taxed costs or allow taxed costs up to or from a particular stage of a proceeding; or
- (d) to order costs on a solicitor and client basis.

59.02 Costs of a Proceeding

(1) In making any order as to costs, the court or a judge may have regard to,

- (a) the amount claimed and the amount recovered;
- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party which tended to shorten or unnecessarily lengthen the duration of the proceeding;
- (f) the manner in which the proceeding was conducted;
- (g) any step in the proceeding that was improper, vexatious, prolix or unnecessary;

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- (h) any step in the proceeding that was taken through over-caution, negligence or mistake;
- (i) the neglect or refusal of any party to make an admission that should have been made;
- (j) whether or not two or more defendants or respondents should be allowed more than one set of costs where they have defended the proceeding by different solicitors, or where, although they defended by the same solicitor, they separated unnecessarily in their defence; and
- (k) any other matter relevant to the question of costs.

(2) In awarding costs to be taxed, the court or a judge may give directions to the taxing officer in respect of any one or more of the matters referred to in paragraph (1); and, subject to such direction or in the absence of any such direction, the taxing officer shall exercise his discretion in respect of any of those matters that may appear to be relevant.

59.03 Costs of a Motion

(1) *Contested Motion*

Where, on the hearing of a contested motion, the court is satisfied that such motion ought not to have been brought or opposed, as the case may be, the court shall fix the costs of the motion and order them to be paid forthwith or order them to be paid forthwith after taxation.

(2) *Motion Without Notice*

On a motion made without notice, there shall be no costs thereof to any party, unless otherwise ordered.

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59.04 Costs on Settlement

Where a proceeding is settled on the basis that a party thereto shall pay or recover costs, and the amount of such costs is not determined by the settlement, then, upon the filing of a copy of the minutes of settlement, such costs may be taxed in accordance with the appropriate tariffs as if an order had been made for the taxation thereof.

59.05 Where Action Brought in Wrong Court

(1) Where an action of the proper competence of a county court is brought in the Supreme Court, or an action of the proper competence of a small claims court is brought in the Supreme Court or in a county court, the trial judge may order that the plaintiff shall not recover any costs.

(2) Where the proceeding is dismissed for want of jurisdiction, the court shall nevertheless have jurisdiction over the costs of that proceeding.

59.06 Costs of Litigation Guardian

(1) In a proper case, the court may order a successful party to pay the costs of a litigation guardian of a party under disability who is a defendant or respondent only to the extent that the successful party is able to recover them from the party liable for his costs.

(2) Where a litigation guardian is ordered to pay costs, he is entitled to recover any such costs paid by him from the person under disability for whom he has acted, unless otherwise ordered.

59.07 Costs of Abandoned Motion, Application or Appeal

(1) Where a party serves a Notice of Motion and fails to set the motion down within the time prescribed by these rules, he shall be deemed to have abandoned the motion, and unless otherwise ordered, the party upon whom the notice has been served is thereupon entitled to the costs of the motion.

**COSTS OF PROCEEDINGS
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(2) A party who serves a Notice of Motion may countermand it by notice served on the opposite party who is thereupon entitled to the costs of the motion.

(3) The costs of any such motion may be taxed without an order, upon production of the Notice of Motion served, with an affidavit that the motion was not set down within the time prescribed by these rules, or upon the production of the notice of countermand served, as the case may be, and, if the costs are not paid within 7 days after taxation, the party entitled thereto may issue execution therefor.

(4) The provisions of this sub-rule shall apply, with any necessary modification, to a Notice of Application or to a Notice of Appeal.

59.08 Taxation of Costs

(1) *Applicability of Tariffs*

- (a) On a taxation of party and party costs, fees and disbursements according to Tariff "A" to these rules and such other disbursements according to the applicable tariff fixed by regulation pursuant to *The Administration of Justice Act* shall be taxed and allowed, and no other fees, disbursements, allowances or charges than therein set forth shall be taxed or allowed in respect of the matters therein provided for, unless otherwise ordered.
- (b) In cases where services authorized by the Law Society of Upper Canada as being within the competence of articulated students-at-law are rendered by such a student, the fees and allowances shall be taxed and allowed at an amount equal to one-half of the amount set down in Tariff "A".

**COSTS OF PROCEEDINGS
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- (c) Costs payable out of the proceeds of land sold, mortgaged or leased under *The Devolution of Estates Act* shall be taxed and allowed according to Tariff "B" to these rules.
- (d) On the passing of accounts by a trustee or a personal representative of a deceased person or by a committee, the master shall fix the costs of such passing of accounts according to the tariff provided for the passing of accounts in a surrogate court, subject to increase in his discretion where the tariff in his opinion is inadequate, but such discretion may be reviewed by a judge on the motion of any person affected thereby.
- (e) In a proceeding for administration or partition, unless otherwise ordered by a judge, instead of the costs being taxed and allowed according to the applicable tariffs, each person properly represented by a solicitor and entitled to costs out of the estate, other than creditors not parties to the proceeding, is entitled to his actual disbursements in the proceeding, not including counsel fees, and there shall be allowed for the other costs of the proceeding payable out of the estate, a commission on the amount realized or on the value of the property partitioned, which commission shall be apportioned among the persons entitled to costs, as may seem just. Subject to such increase or decrease, as may be recommended by a master and approved by a judge, such commission shall be as set out in Tariff "C" to these rules and such remuneration shall be instead of all fees whether between party and party or between solicitor and client.

**COSTS OF PROCEEDINGS
BETWEEN PARTY AND PARTY**

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(2) *Taxing Officer*

Where any party is entitled to costs which have not been fixed, such costs may be taxed by the local taxing officer where the proceeding was commenced, but where the proceeding is in the Supreme Court, such costs shall be taxed, at the election of any party to the proceeding, by a taxing officer at Toronto.

(3) *Procedure on Taxation*

- (a) A party entitled to tax a party and party bill of costs may file with the taxing officer, a copy of the bill of costs and obtain a Notice of Appointment to Tax a Party and Party Bill of Costs (Form 59A) from the appropriate taxing officer and serve a copy of the notice and the bill of costs on every party interested in the taxation at least 7 days before the date fixed for taxation.
- (b) Where a party entitled to tax a party and party bill of costs refuses or neglects to bring in his bill of costs for taxation within a reasonable time, any party liable to pay such costs may obtain a Notice of Appointment to Deliver a Party and Party Bill of Costs for Taxation (Form 59B) from the appropriate taxing officer and serve a copy thereof on every party interested in the taxation at least 21 days before the date fixed for the taxation. Upon being served with such a notice, the person required to deliver and tax his party and party bill of costs shall file and serve a copy thereof on every party interested in the taxation, at least 7 days before the date fixed for the taxation.

**COSTS OF PROCEEDINGS
BETWEEN PARTY AND PARTY**

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- (c) Where a party is required to deliver a bill of costs for taxation and fails to do so at the appointed time, to the prejudice of any other party, the taxing officer may allow the defaulting party a nominal or other sum for costs so as to prevent such other party being prejudiced by such default.
- (d) On any taxation of party and party costs, the taxing officer shall certify the amount of the costs taxed by him and, subject to appeal, his Certificate (Form 59C) is final and conclusive as to the amount therein specified against all parties who have received notice of the taxation.

(4) *Discretion of the Taxing Officer*

- (a) On the taxation of costs to be paid out of a fund or an estate, the taxing officer may direct what parties are to attend on the taxation and he may disallow the costs of any party whose attendance he considers unnecessary by reason of the interest of such party in the fund or estate being small or remote or sufficiently protected by other interested parties.
- (b) Where several actions are brought on one bond, recognizance, promissory note, bill of exchange or other instrument, there shall be collected or recovered the costs taxed in one action only, at the election of the plaintiff, and the actual disbursements only in the other actions, unless the court otherwise orders.
- (c) Where any one of the persons constituting a class formed by a master for representation in his office by one solicitor insists on being represented by a different solicitor, he shall pay the costs of his own solicitor and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so designated.

**COSTS OF PROCEEDINGS
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- (d) Where a party entitled to receive costs from another party is required to pay costs to that party, the taxing officer may adjust the costs by way of set-off.
- (e) Unless otherwise ordered, no disbursements, other than fees paid to officers of the court, shall be allowed or taxed unless the payment thereof or the liability therefor is established, either by the solicitor appearing on the taxation, or by affidavit.

(5) *Objections to Taxation*

- (a) Upon request, the taxing officer shall withhold his certificate for 7 days, or such other time as he may direct, in order to allow a party who is dissatisfied with the allowance or disallowance by the taxing officer of the whole or any part of any item to deliver to every other party interested therein and to the taxing officer, objections in writing to such allowance or disallowance, specifying concisely the item objected to.
- (b) A party upon whom objections have been served may, within 7 days of such service, or within such other time as the taxing officer may direct, deliver to every other party interested therein and to the taxing officer, a reply thereto.
- (c) The taxing officer shall then reconsider and review his taxation upon such objections and reply, if any, and he may receive further evidence in respect thereof, and he may, and if requested he shall, state in writing the grounds and reasons for his decision thereon.

**COSTS OF PROCEEDINGS
BETWEEN PARTY AND PARTY**

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(6) *Appeal from Taxation*

- (a) A party may appeal from any decision of any officer taxing costs upon any question of principle or as to any item in respect of which objections have been duly filed, in a Supreme Court proceeding, to a judge of the Supreme Court or, in a county court proceeding, to a judge of that court.
- (b) The time for any such appeal and the procedure thereon shall be governed by the provisions of Rule 63 as if the appeal were from an interlocutory judgment or order of a master, local judge, local master or other officer.

59.09 Costs of a Sheriff

- (1) A sheriff claiming any fees, expenses or remuneration that have not been taxed shall, upon being required by either party and on payment of the prescribed fee, furnish such party with a copy of his bill of costs and have the same taxed by the proper taxing officer in his county.
- (2) A sheriff shall not, without taxation, collect any fees, costs or expenses after he has been required to have the same taxed.
- (3) Either the sheriff or the party requiring taxation may obtain an appointment for the taxation and the procedure thereon shall be the same as in the case of a taxation between party and party.
- (4) The sheriff is entitled to his fees and expenses on the enforcement of a Writ of Seizure and Sale, even where no money is realized on the seizure or sale.

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(5) Where a person liable under a Writ of Seizure and Sale is dissatisfied with the amount of fees or expenses claimed by a sheriff in respect of the enforcement thereof, he may apply to a judge, before or after payment thereof, upon notice to the sheriff and, if the amount appears to be unreasonable, notwithstanding that it is in accordance with the tariff, the judge may reduce the amount, or order the amount to be refunded upon such terms as may seem just.

59.10 Liability of the Solicitor for Costs

(1) In any proceeding where a solicitor for any of the parties has acted in manifest disregard of the interests of justice and has thereby caused costs to be incurred improperly, or without reasonable cause, or wasted by undue delay, negligence or other default, the court may make an order,

- (a) disallowing costs as between the solicitor and his client;
- (b) directing the solicitor to reimburse his client for any costs that the client has been ordered to pay to any other party; and
- (c) ordering the solicitor personally to pay the costs of any party.

(2) Such an order may be made by the court, on its own motion, or on the motion of any party to the proceeding, but no such order shall be made unless the solicitor is given a reasonable opportunity to make representations to the court.

(3) The court may direct that notice of any order against a solicitor under this sub-rule shall be given to his client in such manner as may be specified in the order.

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59.11 Charging Order

(1) Where a solicitor has been employed to commence, continue or defend any proceeding, a judge may, upon an application, declare such solicitor, or his personal representative, to be entitled to a charge upon the property recovered or preserved through the instrumentality of such solicitor, for his costs, charges and expenses of or in reference to such proceeding, and all conveyances and acts done to defeat, or which may operate to defeat, such right, unless made to a bona fide purchaser for value without notice, are absolutely void and of no effect as against such charge.

(2) The judge may make an order for taxation of such costs, charges and expenses and for the raising and payment of the same out of the property.

JUDGMENTS

RULE 60 SETTLING, SIGNING AND ENTERING JUDGMENTS

60.01 Endorsement by Judge or Officer

(1) Subject to paragraph (2), every judgment shall be endorsed on the trial record, notice of motion or notice of application, as the case may be, by the judge or officer giving it.

(2) Where written reasons for a judgment are delivered, the endorsement may consist of a simple reference to the reasons, and a copy of the reasons shall be filed in the court file.

60.02 Drafting and Approval of Formal Document

(1) Any party affected thereby may prepare a draft of the formal judgment and a copy thereof shall be submitted to all other parties represented at the trial or hearing for approval as to its form.

(2) Where such approval is not received within a reasonable time, an appointment shall be obtained for the settling of the judgment before the registrar or, where deemed necessary, before the judge or officer giving it, and the appointment shall be served on all other parties represented at the trial or hearing.

(3) In a case of urgency, the judgment may be settled and signed by the judge or officer who gave it without the approval of any of the parties represented at the trial or hearing as to its form.

60.03 Form of Judgment

(1) Every judgment shall show on its face the day of the week, the month and the year on which it was given and shall take effect from that date. Except where required by the rules or by any statute to be made by the registrar, the judgment shall show the name of the judge or officer who gave it.

**SETTLING, SIGNING AND ENTERING RULE 60
JUDGMENTS**

(2) Every judgment given by a judge or officer shall recite in its preamble the date upon which the trial or hearing took place, the parties who were present at the trial or hearing in person or by counsel and those who were not, and shall recite any undertaking made by a party as a condition upon which the judgment was given.

(3) The operative parts of a judgment shall be divided into convenient paragraphs, numbered consecutively.

(4) A judgment directing payment into court on behalf of a minor shall show the date of birth and the full address of the minor and shall direct that a copy thereof be served on the Official Guardian.

(5) A judgment for the payment of costs shall direct payment to the party entitled to receive such costs and not to his solicitor.

(6) A judgment directing a reference may direct in general terms that all necessary inquiries be made, accounts taken and costs taxed as the case may be.

(7) A judgment directing a reference in general terms shall have the effect of conferring upon the person to whom the reference has been directed all the powers given to any such person by these rules.

60.04 Settling and Signing Judgment

(1) Every judgment shall be settled and signed by the registrar at the place of trial or hearing, or by the registrar at the place where the proceeding was commenced, unless the judge or officer giving the judgment has himself settled and signed it.

SETTLING, SIGNING AND ENTERING RULE 60
JUDGMENTS

(2) Where an objection is taken to the form of the judgment on its settlement before a registrar, the registrar shall settle the judgment in the form he deems proper and grant leave to the party taking the objection to attend, within a reasonable time, upon the judge or officer giving the judgment for clarification of that part of the judgment to which objection has been taken. Where clarification is not sought within the stated time, the judgment as settled by the registrar shall stand. Where clarification is received, the registrar shall resettle the judgment accordingly, and sign it.

(3) Where it is directed by a judgment that it may only be signed upon the filing of an affidavit or the production of a document, the registrar shall examine the affidavit or document and ascertain that it is regular and sufficient before signing the judgment.

60.05 Entry of Judgment

(1) Entry of a judgment shall be made by the registrar,

- (a) inscribing at the foot of the original of the document a notation as to the Entry Book in which an authenticated copy is to be inserted or the film on which the original is to be photographed, as the case may be, together with the date when such insertion or photograph was made; and
- (b) inserting an authenticated copy thereof in an Entry Book, or photographing the original document on microphotographic film.

(2) Every judgment shall be entered in the office of the registrar in which the proceeding was commenced and a copy thereof as entered shall be filed in the court file.

**SETTLING, SIGNING AND ENTERING RULE 60
JUDGMENTS**

(3) Every judgment by which a prior judgment is affirmed, reversed, set aside, varied, modified or amended shall, in addition to any other entry thereof, be entered in the office where the original judgment was entered.

(4) A judgment of an appellate court shall also be entered in the office of the local registrar at Toronto.

(5) The certificate of the Registrar of the Supreme Court of Canada as to a judgment made on an appeal to that court shall be entered in the office of the local registrar at Toronto and in the office of the registrar in which the proceeding was commenced.

(6) The certificate of a taxing officer as to the taxation of party and party costs awarded by a judgment shall be entered in the office of the registrar in which such judgment was entered and shall be cross-indexed therewith.

60.06 Amendment of Judgment

Any judgment may be amended on a motion in the proceeding where,

- (a) there are clerical mistakes in the judgment or errors arising from an accidental slip or omission;
- (b) the judgment requires amendment in any particular on which the court did not adjudicate; or
- (c) a party is entitled to maintain an action for the reversal or variation of the judgment upon the ground of matter arising subsequent to the making thereof or subsequently discovered, to impeach the judgment on the ground of fraud, or to suspend the operation of the judgment, or to carry the judgment into operation, or for any further or other relief than that originally awarded.

JUDGMENTS

RULE 61 ENFORCEMENT OF JUDGMENTS

61.01 Enforcement of Judgment for Payment or Recovery of Money

(1) A judgment for the payment or recovery of money may be enforced by the issue of a Writ of Seizure and Sale (Form 61A) against the property of the debtor.

(2) Where a judgment is for the payment of money into court, a Writ of Seizure and Sale shall be endorsed with a notice to the effect that all money realized by the sheriff pursuant thereto is to be paid into court.

(3) Where a judgment is for payment within a specified time, a Writ of Seizure and Sale shall not issue until after the expiration of that time.

61.02 Enforcement of Judgment for Possession of Real Property

A judgment for the recovery or delivery of the possession of land may be enforced by the issue of a Writ of Possession (Form 61B).

61.03 Enforcement of Judgment for Delivery of Personal Property

A judgment for the delivery of any personal property, other than land or money, may be enforced by the issue of a Writ of Delivery (Form 61C).

61.04 Enforcement of Judgment to Do or Abstain from Doing any Act

(1) A judgment requiring any party to do any act, other than the payment of money, or to abstain from doing any act, may be enforced against the party refusing or neglecting to obey the judgment by a contempt order made by a judge on the motion of any party entitled to enforce obedience to the judgment and on notice to the party against whom the order is sought.

ENFORCEMENT OF JUDGMENTS

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(2) A contempt order shall not be granted unless the judge is satisfied that the party required by the judgment to do, or abstain from doing any act had actual knowledge of the substance of the judgment before the expiration of the time limited by the judgment, if any, for the doing or abstaining from the act.

(3) Where the judgment does not specify any time within which the act is to be done or abstained from, a judge may fix the time within which compliance is to be required.

61.05 Writ of Seizure and Sale

(1) *Where Available Without Leave*

Where a judgment may be enforced by a Writ of Seizure and Sale, the judgment creditor is entitled to the issue of one or more Writs of Seizure and Sale.

(2) *Where Leave is Required*

(a) A Writ of Seizure and Sale shall not issue for the enforcement of a judgment for the payment of recovery of money without first obtaining leave of the court where,

- (i) six years or more have elapsed since the date of the judgment;
- (ii) a change has taken place, whether by death or otherwise in the parties entitled or liable under the judgment;
- (iii) any property sought to be seized under a Writ of Seizure and Sale is in the hands of a receiver appointed by the court; or
- (iv) the enforcement of the judgment is subject to the fulfilment of any condition or contingency.

ENFORCEMENT OF JUDGMENTS

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- (b) Where the court grants leave to issue a Writ of Seizure and Sale and it is not issued within one year from the date of the order granting such leave, the order granting leave shall cease to have effect, but nothing in this clause shall preclude the granting of a subsequent application for such leave.

(3) *Duration and Renewal*

- (a) A Writ of Seizure and Sale shall remain in force for 6 years from the date of its issue and for a further 6 years from each renewal thereof.
- (b) Where a Writ of Seizure and Sale is filed with any sheriff, he shall serve notice of its expiration by mailing such notice not less than 30 days nor more than 60 days prior to such expiration to the party who filed the Writ of Seizure and Sale addressed to him at the last address of such person endorsed thereon.
- (c) A Writ of Seizure and Sale which is filed with any sheriff may be renewed by filing with him before its expiration a Request to Renew (Form 61D) and the sheriff shall endorse and sign upon the Writ of Seizure and Sale a memorandum stating the day, month and year of such renewal, and a Writ of Seizure and Sale so endorsed shall be entitled to priority according to the time of the last filing thereof.
- (d) A Writ of Seizure and Sale which is not filed with any sheriff may be renewed by filing with the registrar who issued it before its expiration a Request to Renew, and the registrar shall endorse and sign upon the Writ of Seizure and Sale a memorandum stating the day, month and year of such renewal.

ENFORCEMENT OF JUDGMENTS

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(4) *Writs of Seizure and Sale to be Endorsed*

Every Writ of Seizure and Sale shall be endorsed with,

- (a) a direction to any sheriff with whom the Writ is filed, or to be filed, to levy the amount still owing to the judgment creditor under the judgment and specifying that amount including interest thereon at the rate and from the date specified by the judgment. In addition to the sum so specified, the direction to levy shall direct the sheriff with whom the Writ is filed to levy an amount sufficient to recover his fees and expenses.
- (b) the name and address of the party and of his solicitor, if any, directing a sheriff to levy.

(5) *Seizure of Chattels*

Where chattels are seized under a Writ of Seizure and Sale, the sheriff shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises from which they have been so seized.

(6) *Sale of Chattels*

Chattels seized under a Writ of Seizure and Sale shall not be sold by the sheriff until he has,

- (a) mailed to the execution creditor or his solicitor and to the owner, his agent or employee, at the last known address, notice of the time and place of the sale, at least 10 days prior to the date of the sale; and

ENFORCEMENT OF JUDGMENTS

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- (b) published notice of the time and place of the sale in a newspaper having a general circulation in the county where the chattels have been seized.

(7) *Sale of Land*

- (a) A sale of land shall not be held under any Writ of Seizure or Sale until,
 - (i) the expiration of 6 months from the day on which the Writ is filed with the sheriff or, where the Writ has been withdrawn, from the day on which the Writ is re-filed;
 - (ii) after the sheriff has made a return of *no goods* in respect of all or part of the amount directed to be levied;
 - (iii) the sheriff has mailed a notice of sale to the execution creditor or his solicitor and to the execution debtor at his last known address at least 30 days preceding the sale;
 - (iv) the sheriff has published once in The Ontario Gazette at least 30 days preceding the sale and in a newspaper having a general circulation in the county in which the land is situate, an advertisement of sale once each week for two successive weeks, the last of such advertisements to be published not less than one week nor more than 3 weeks preceding the date of sale; and
 - (v) the sheriff has posted a notice of such sale in a conspicuous place on the property to be sold and in his office for at least 30 days preceding the sale.

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- (b) Such notice and advertisement shall specify,
 - (i) the property to be sold;
 - (ii) the name of the plaintiff and defendant;
 - (iii) the time and place of the intended sale;
and
 - (iv) the name of the debtor whose interest is
to be sold.
- (c) Nothing in this rule shall be taken to prevent an adjournment of the sale to a future date without further notice or advertisement.
- (d) The advertisement in The Ontario Gazette of any lands for sale under a Writ of Seizure and Sale during the currency of the Writ shall be deemed to be sufficient commencement of the sale to enable the Writ to be completed by a sale and conveyance of the lands after the Writ has expired.

61.06 Writ of Possession

(1) Where Leave is Required

Unless otherwise provided by the judgment, a Writ of Possession shall not be issued without leave of the court, which may be obtained on a motion made without notice, but such leave shall not be given unless it is shown by affidavit that all persons in actual possession of the whole or any part of the real property have received sufficient notice of the proceeding in which such judgment was obtained to have enabled them to apply to the court for relief.

(2) Duration

A Writ of Possession remains in force for one year from the date of the judgment or order authorizing its issue, and where the Writ is filed with a sheriff, no notice of its expiration need be given by him.

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61.07 Writ of Delivery

Where the property is not delivered up by the judgment debtor pursuant to a Writ of Delivery served upon him and cannot be found or taken by the sheriff, the judgment creditor may apply to a judge for an order directing the sheriff to take any other personal property of the judgment debtor not exceeding double the value of the property in question, to be kept by him pending any further order of the court to enforce obedience to the judgment.

61.08 Enforcement by or against a Person not a Party

(1) Where a judgment is made for the benefit of a person who is not a party, that person shall be entitled to enforce obedience to the judgment by the same process as if he were a party.

(2) Where a judgment may be enforced against a person who is not a party, that person shall be liable to the same process for enforcing obedience to the judgment as if he were a party.

61.09 Return by Sheriff

(1) When a Writ has been executed or has expired, the sheriff shall endorse a memorandum to that effect on the Writ and return it to the office from which it was issued.

(2) The registrar to whom a Writ is returned shall endorse thereon the day and hour when it was returned to his office.

(3) Where a Writ has been withdrawn, the sheriff shall record the day and hour of such withdrawal and endorse a memorandum to that effect on the Writ and return it to the party who filed it or to his solicitor.

(4) Any party or his solicitor who has filed a Writ with a sheriff may require the sheriff by a demand in writing to report the manner in which he has executed the Writ.

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(5) Where the sheriff fails to comply with a demand made under the preceding paragraph, within a reasonable time, the party serving the demand may apply to a judge for an order directing the sheriff to comply with such demand.

(6) Where a sheriff is required to make a report to the court with respect to any Writ filed with him, he shall forthwith file in the office from which the order was issued his Certificate (Form 61E) as to the manner in which he has executed the Writ.

61.10 Examination in Aid of Execution

(1) *Examination of Judgment Debtor*

- (a) A judgment creditor may, without an order, examine the judgment debtor as to,
 - (i) his assets and income;
 - (ii) the means he had when the debt or liability in respect of which judgment has been obtained against him was incurred or, in the case of a judgment for costs only, at the time of the commencement of the proceedings;
 - (iii) the means he still has of discharging the judgment;
 - (iv) the disposal he has made of any property since contracting such debt or incurring such liability or, in the case of a judgment for costs only, since the commencement of the proceeding; and
 - (v) any and what debts are owing to him.

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- (b) Where the judgment is against a corporation, the judgment creditor may, without an order, examine any officer or director of the corporation as to,
 - (i) the names and addresses of the shareholders of the corporation;
 - (ii) the amount and particulars of the shares held or owned by each shareholder, and the amount paid thereon;
 - (iii) any and what debts are owing to the corporation;
 - (iv) the assets and income of the corporation;
 - (v) the disposal made by it of any property since contracting the debt or incurring the liability in respect of which the judgment was obtained or, in the case of a judgment for costs only, since the commencement of the proceeding.
- (c) No further examination shall be had without an order until the expiration of one year from the completion of the preceding examination.

(2) *Examination of Any Other Person*

- (a) The court may order any person to whom the debtor has made a transfer of his property, exigible under execution, since the date when the debt or liability in respect of which judgment has been obtained or incurred, or, where the judgment is for costs only, since the commencement of the proceeding, to submit to being examined as to,

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- (i) the disposal the debtor has made of any property since contracting the debt or incurring the liability; and
 - (ii) any and what debts are owing to the debtor.
 - (b) Where the court is satisfied that there is reasonable ground for believing that a person or corporation is in possession of any property of the judgment debtor, exigible under execution, it may order such person or any officer of the corporation to submit to examination as to the assets and income of the judgment debtor.
 - (c) Where any difficulty arises in or about the enforcement of any judgment, the court may make such order for the examination of any other person as may seem just.
- (3) Unless otherwise ordered or provided by this rule, the procedure prescribed by Rule 33 shall apply to the examination of any person liable to be examined under this rule.
- (4) Where a judgment debtor neglects or refuses to attend for an examination under this rule or, where he attends and refuses to disclose his property or his transactions, or does not make satisfactory answers respecting the same or, if it appears from such examination that he concealed or disposed of his property in order to defraud his creditors or any of them, a judge may commit him for contempt.
- (5) Where an officer of a corporation or any other person liable to be examined under this rule neglects or refuses to attend for his examination or attends and refuses to disclose any of the matters in respect of which he may be examined, a judge may order him to be committed for contempt.

ENFORCEMENT OF JUDGMENTS

RULE 61

61.11 Enforcement of Contempt Order

(1) A contempt order may be enforced by the issuance of a Warrant for Committal (Form 61F) directed to all sheriffs and other peace officers in the Province of Ontario to apprehend the person against whom the contempt order has been issued and to detain him in custody until he can be brought before the court.

(2) Where a person is apprehended or detained in custody under a Warrant for Committal, without obeying the judgment; then, upon the return of the sheriff that the person has been so apprehended or detained, the party seeking to enforce the judgment is entitled to apply to a judge for a Writ of Sequestration (Form 61G) against the property of the disobedient person.

(3) If a Warrant for Committal cannot be executed against the person refusing or neglecting to obey the judgment by reason of his being out of the jurisdiction of the court or his having absconded or that, with due diligence, he cannot be found or, if for any other reason a judge is satisfied that a Warrant for Committal ought to be dispensed with, leave may be granted for the issuance of a Writ of Sequestration against the property of the disobedient person.

(4) If a person refuses or neglects to pay a judgment for the payment of money, a judge may, upon the motion of the party seeking to enforce the judgment, at the expiration of the time limited for the payment thereof, make an order for the issuance of a Writ of Sequestration.

(5) Where it is made to appear that any person committed for contempt is in actual custody, a judge may grant him such relief as in the nature and circumstances may seem just, but any relief that may be granted to any such person does not relieve him for any civil liability.

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(6) Where any judgment against a corporation is wilfully disobeyed, it may be enforced by a Writ of Sequestration against the corporation or by a Warrant for Committal against the directors or officers of the corporation.

(7) Any person or corporation disobeying a judgment or a contempt order is liable to be fined in lieu of or in addition to having a contempt order enforced against him.

(8) Where any person refuses or neglects to comply with a judgment requiring him to do any act, other than the payment of money, or to abstain from doing any act, a judge may, instead of, or in addition to, granting a contempt order, order the act to be done at the expense of the disobedient party by the party who obtained the order or any other person appointed by the judge; and, upon the act being done and the expense thereof ascertained, a Writ of Seizure and Sale may issue against the disobedient party for the amount so ascertained and costs.

61.12 Garnishment Proceedings

(1) Where, on the motion of a judgment creditor, it is made to appear by affidavit that the judgment is unsatisfied and that some person is or will become indebted to the judgment debtor, the court may, by a Garnishee Order (Form 61H), order that all debts owing or accruing due from that person (hereinafter called the garnishee) to the judgment debtor, be attached to answer the judgment debt and that the garnishee do at a time and place therein named, attend and show cause why he should not pay into court the debt due or to become due from him to the judgment debtor, or so much thereof as is sufficient to satisfy the judgment debt and the claims of any other execution creditors.

(2) Notice of any such motion shall, unless dispensed with, be given to the judgment debtor.

(3) Where the garnishee is within Ontario, the order shall be served upon him.

ENFORCEMENT OF JUDGMENTS

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(4) Where the garnishee is not within Ontario,

(a) such an order may only be made where the debt to be attached is one for which the judgment debtor would be entitled to commence proceedings in Ontario against the garnishee;

(b) Notice of the Garnishee Order (Form 61 I) and not the order itself shall be served on the garnishee.

(5) The garnishee shall be deemed to be indebted although any debt sought to be attached has been assigned, charged or encumbered by the judgment debtor, if the assignment, charge or encumbrance is fraudulent as against creditors or is otherwise impeachable by them.

(6) The order from the time of service binds the debts attached.

(7) If the garnishee admits his liability, he may pay the amount admitted into court, and give notice of such payment to the judgment creditor.

(8) If the garnishee does not pay into court the amount due from him to the judgment debtor and does not dispute the debt due or claimed to be due from him to the judgment debtor or, if he does not appear upon notice to him, then the court may order payment into court of the debt.

(9) If the debt is not payable at the time the motion is heard, an order may be made for the payment thereof when it becomes payable.

(10) If the garnishee disputes his liability, the court may determine the dispute in a summary way or may direct the trial of an issue.

ENFORCEMENT OF JUDGMENTS

RULE 61

(11) Where the debt claimed to be due or accruing from the garnishee is of an amount recoverable in a county court, or in a small claims court, the order shall require the garnishee to appear before the judge of the County Court, or of the Small Claims Court within whose jurisdiction the garnishee resides, on a day to be appointed in writing by such judge, and the garnishee shall be served with notice of the day appointed and all subsequent proceedings shall then be taken and carried on before such judge.

(12) Where a garnishee has notice of an assignment of a debt or claim thereto, or a charge thereon, he shall give notice thereof, and the court may order the assignee or the claimant to appear and state the nature and particulars of his claim.

(13) Payment into court by the garnishee pursuant to a garnishee order is a valid discharge to him as against the judgment debtor or any assignee or claimant of whose claim he has given notice, and who has been called upon to show cause by an order made under this sub-rule.

APPEALS

RULE 62 APPEALS TO AN APPELLATE COURT

62.01 Commencement of Appeals

(1) Unless otherwise provided by any statute, or by these rules, an appeal to an appellate court, including a motion for a new trial, shall be made by Notice of Appeal (Form 62A) served upon all parties whose interests are sought to be affected by the appeal, within 30 days after the date of the judgment appealed from.

(2) The Notice of Appeal shall state the relief sought and shall set forth the grounds of appeal.

(3) The appeal shall be set down for hearing by filing in the office of the Registrar the Notice of Appeal, with proof of service, within 10 days after such service. At the same time, there shall be left with the Registrar either proof that copies of the evidence required for use upon the appeal have been ordered, or an undertaking by the appellant or his solicitor to order the evidence not agreed to be omitted within 30 days after the filing of the Notice of Appeal. Proof that the evidence has been ordered in compliance with such undertaking shall be filed within 5 days of the time it is so ordered.

Note: In divorce proceedings, the time for appeal is prescribed by s. 17 of the Divorce Act (Canada) 1967-68, c. 24.

62.02 Amendment of Grounds of Appeal

(1) The Notice of Appeal may be amended, without leave, by the appellant serving on each of the parties on whom the Notice of Appeal was served a Supplementary Notice of Appeal (Form 62B) and by filing it with proof of service before the appeal is perfected.

(2) Except with the leave of the court hearing the appeal, no grounds other than those stated in the Notice of Appeal or any Supplementary Notice may be relied upon by the appellant at the hearing.

APPEALS TO AN APPELLATE COURT RULE 62

62.03 Cross-Appeals

Where a respondent intends to contend that the judgment appealed against should be varied, he may, within 15 days after a Notice of Appeal has been served upon him, serve a Notice of Cross-Appeal (Form 62C) upon all parties whose interests are sought to be affected, and file such notice, with proof of service, within 5 days after service.

62.04 Respondent's Notice of Contention

(1) A respondent who has not cross-appealed but who intends to contend on the appeal that,

(a) the judgment appealed from should be affirmed on grounds other than those given by the court appealed from; or

(b) in the event that the appeal is allowed in whole or in part, he is entitled to other or different relief or disposition than that given by the judgment appealed from,

shall within 15 days from the service of the Notice of Appeal serve on the appellant and any other party whose interests may be affected thereby and within 5 days thereafter file with the Registrar, with proof of service, a Notice of Contention (Form 62D) specifying the grounds thereof.

62.05 Certificate of Appellant and Respondent or Agreement

(1) In order to minimize, where possible, the reproduction of exhibits and the transcription of evidence for use on an appeal, the appellant shall serve on each respondent, together with the Notice of Appeal, a Certificate of Appellant (Form 62E) setting forth those exhibits or parts thereof (by number) and of the evidence (by witness) that he suggests are not required for the appeal.

(2) Within 15 days after receipt of the Certificate of Appellant, a respondent shall serve on the appellant a Certificate of Respondent (Form 62F) either confirming the Certificate of Appellant or setting out any additions to, or deletions therefrom. A respondent who fails to do so within the time prescribed shall be deemed to confirm the Certificate of Appellant.

APPEALS TO AN APPELLATE COURT RULE 62

(3) In lieu of complying with paragraph (1) of this sub-rule, the parties may file an agreement as to contents of the Appeal Books and the evidence to be transcribed.

(4) Upon being served with a Certificate of Respondent by each respondent or after the time for such service has expired, or upon the filing of an agreement as to the contents of the appeal book and the evidence to be transcribed, the appellant shall order in writing all the evidence that has not been agreed to be omitted. Where the party has ordered all the evidence, he shall forthwith modify such order in writing to comply with the certificates or agreement.

(5) When the evidence has been transcribed, the court reporter shall forthwith notify all parties and the Registrar.

(6) The court may impose cost sanctions where unnecessary evidence or exhibits were transcribed or reproduced.

62.06 Perfecting Appeals

(1) The appellant shall, within 30 days after filing the Notice of Appeal, or within 15 days after the evidence has been transcribed, whichever is later, cause to be forwarded to the Registrar the trial record and the original exhibits and shall file with the Registrar the certificates or agreement referred to in Rule 62.05 and shall deposit with the Registrar in the case of an appeal to the Court of Appeal five copies and, in the case of an appeal to the Divisional Court, three copies of the following:

- (a) the appeal books;
- (b) the evidence; and
- (c) the Appellant's Statement.

(2) Where compliance with the rules as to the appeal books or transcripts of evidence would cause undue expense or delay, a judge of the appropriate appellate court may give special directions.

APPEALS TO AN APPELLATE COURT RULE 62

(3) As soon as the record, exhibits and the certificates or agreement referred to in Rule 62.05 have been filed, and the appeal books, the evidence and the Appellant's Statement have been deposited with the Requistar, with proof of service on all other parties to the appeal, the appeal shall be deemed to be perfected and,

- (a) not later than 5 days after the appeal is perfected, the appellant shall serve all other parties to the appeal with a notice of the date upon which it was so perfected, and file such notice with proof of service; and
- (b) subject to clause (c), appeals to the Court of Appeal perfected on or before the last day of any month shall be placed on the list of cases to be heard in the second month thereafter in which appeals are to be heard; and
- (c) appeals to the Court of Appeal perfected in June shall be placed on the list of cases to be heard in September; and
- (d) an appeal to the Divisional Court shall, on the 15th day after it is perfected, be placed on the list of cases to be heard at the appropriate place of hearing.

62.07 Appeal Books

(1) The appeal books shall contain, in the following order:

- (a) an index;
- (b) the Notice of Appeal and any Supplementary Notice of Appeal, Notice of Cross-Appeal or Notice of Contention;
- (c) the pleadings;
- (d) the judgment appealed from;
- (e) the reasons for judgment;

APPEALS TO AN APPELLATE COURT RULE 62

- (f) such of the exhibits filed as are documents or parts of documents and which are material to the hearing of the appeal in order of the dates of such documents; provided, however, that documents having common characteristics may be arranged in separate groups in order of their dates;
- (g) any affidavit evidence;
- (h) the certificates referred to in Rule 62.05, or an agreement as to the contents of the Appeal Books and Evidence;
- (i) any order made in respect of the conduct of the appeal;
- (j) any other document relevant to the hearing of an appeal.

(2) The Appeal Books may, at the option of the appellant, be completed in compliance with the Rules of the Supreme Court of Canada relating to an appeal case.

(3) The solicitor or the appellant shall include in the Appeal Books a certificate signed by him, or someone authorized by him, certifying to the completeness and legibility of the contents and the Registrar may refuse to accept the Appeal Books if they do not comply with these rules or are not readily legible.

62.08 Appellant's Statement

A statement signed by counsel for the appellant or some person specifically authorized by counsel entitled "Appellant's Statement" shall state who is appealing, the court appealed from and the result in the court below, and shall consist of four parts and schedules as follows:

Part I. A concise summary of all relevant facts with such reference to the evidence by page and line as may be necessary.

APPEALS TO AN APPELLATE COURT RULE 62

Part II. A concise statement setting out clearly and particularly in what respect the judgment appealed from is alleged to be erroneous.

Part III. A concise statement of the law relied upon in support of each issue raised in Part II, including the cases and authorities intended to be cited relating to that issue.

Part IV. A concise statement of the order that the appellate court will be asked to make, including any special disposition with regard to costs.

Schedule A. List of authorities referred to.

Schedule B. The text of all relevant provisions of Statutes or Regulations (or copies of the complete Statute or Regulation may be filed and served with the Statement).

62.09 Respondent's Statement

(1) Every respondent shall deposit with the Registrar in the case of an appeal to the Court of Appeal five copies, and in the case of an appeal to the Divisional Court, three copies, and shall serve upon the appellant and all other parties to the appeal a statement signed by counsel for the respondent or by some person specifically authorized by counsel entitled "Respondent's Statement" which shall consist of four parts and schedules as follows:

Part I. A statement of the facts in the appellant's summary of relevant facts which the respondent accepts as correct and those facts with which he disagrees and a concise summary of any additional facts relied upon with such reference to the evidence by page and line as may be necessary.

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Part II. The position of the respondent with respect to the issues raised by the appellant, each issue being followed by a concise statement of the law bearing on the issue, including case and authorities, relating to that issue.

Part III. Any additional issues intended to be raised by the respondent, each issue being followed by a concise statement of the law bearing on the issue, including cases and authorities relating to that issue.

Part IV. A concise statement of the order that the appellate court will be asked to make, including any special disposition with regard to costs.

Schedule A. List of authorities referred to.

Schedule B. The text of all relevant provisions of Statutes or Regulations (or copies of the complete Statute or Regulation may be filed and served with the Statement).

(2) Where a respondent has, pursuant to Rule 62.03, given notice of cross-appeal,

(a) his statement as an appellant by cross-appeal shall be delivered with or incorporated in his Respondent's Statement; and

(b) the appellant shall deliver his statement as a respondent by cross-appeal within 5 days from the receipt of the Respondent's Statement.

(3) In an appeal to the Court of Appeal a Respondent's Statement shall be served and deposited with proof of service upon each of the other parties to the appeal not later than the 20th day of the month preceding the month in which the appeal is listed to be heard.

APPEALS TO AN APPELLATE COURT RULE 62

(4) In an appeal to the Divisional Court the Respondent's Statement shall be served and deposited with proof of service not later than 14 days after the appeal is perfected.

62.10 Failure to Perfect Appeal

(1) If an appeal to an appellate court is not perfected within the time prescribed or allowed, the respondent may apply to the Registrar, on 10 days notice to the appellant, to have the appeal dismissed as an abandoned appeal, and, if he is also an appellant by cross-appeal, he may move before a judge of the appellate court for directions in respect of the cross-appeal.

(2) If the appellant does not order the evidence in compliance with his undertaking and file proof thereof within the required time, the Registrar, on 10 days notice to the appellant, may order that the appeal be dismissed as an abandoned appeal, unless otherwise ordered by a judge of the appropriate appellate court.

(3) If the appeal is not perfected by the appellant within 30 days after notification by the court reporter that the evidence has been transcribed, the Registrar may give notice to the appellant that, unless the appeal be perfected within 10 days thereafter, the appeal will be dismissed as an abandoned appeal.

(4) If the appeal is not perfected within the 10 days from the giving of either of such notices or within such further time as is allowed by a judge of the appropriate appellate court, the Registrar shall dismiss the appeal as an abandoned appeal with costs to be taxed and shall issue a Certificate of Dismissal (Form 62G.)

APPEALS TO AN APPELLATE COURT RULE 62

62.11 Appellant May Discontinue

(1) An appellant may discontinue his appeal by filing with the Registrar and serving upon the respondent a notice, signed by the appellant or his solicitor, stating that he has so discontinued it and thereupon the appeal is at an end, and the respondent is entitled to his costs of the appeal unless within 15 days the respondent applies to a judge of the appellate court for directions.

(2) Where an appeal is discontinued or abandoned, a respondent who has cross-appealed may deliver a Notice of Election to Proceed (Form 62H) within 15 days thereafter, in which case he shall also file an undertaking to pay for the evidence not already prepared. In default of so doing, the cross-appeal shall be deemed to be discontinued without costs unless otherwise ordered by a judge of the appropriate appellate court.

62.12 Appeals from a Final Judgment or Order of a Master, Local Judge, Local Master or other Officer.

A person affected by a final judgment or order of a master, local judge, local master or other officer may appeal therefrom to the Divisional Court and the provisions of Rule 62 in so far as they apply to an appeal to the Divisional Court shall apply to any such appeal.

62.13 Motion for Leave to Appeal from any Judgment or Order of the Divisional Court

(1) An appeal to the Court of Appeal from any judgment or an order of the Divisional Court shall not lie unless leave to appeal shall have been granted by the Court of Appeal.

(2) The motion for leave shall be made within 15 days and returnable within 30 days after the date of the judgment or order sought to be appealed from.

(3) If leave be granted, the Notice of Appeal shall be served and the appeal set down within 7 days after the granting of leave.

(4) Except as provided in this sub-rule, the provisions of Rule 62 shall apply to any such appeal.

APPEALS

RULE 63 APPEALS FROM INTERLOCUTORY JUDGMENTS OR ORDERS IN THE SUPREME COURT

63.01 Appeal from an Interlocutory Judgment or Order of a Master, Local Judge, Local Master or other Officer

(1) Except in the case of an interim order in respect of any claim made in a divorce proceeding, a person affected by an interlocutory judgment or order of a master, local judge, local master or other officer may appeal therefrom to a judge of the High Court.

(2) An appeal may be made notwithstanding that the judgment or order was in respect of a proceeding as to which the master, local judge, local master or other officer had jurisdiction only by consent.

(3) The appeal shall be on notice setting out the grounds of the appeal, served within 7 days and returnable within 14 days after the judgment or order was made.

63.02 Record

(1) Where an appeal is taken to a judge of the High Court, the appellant shall, on or before the day prior to the hearing of the appeal, transmit to the registrar for the use of the court and furnish to each respondent a copy of the record containing copies of documents in the following order:

- (a) An index;
- (b) The Notice of Appeal;
- (c) The judgment or order appealed from and the reasons for the decision, if any;
- (d) Such of the material filed in the proceeding as is necessary for the due hearing of the appeal; and
- (e) A concise statement, without argument, of the facts and law relied on by the appellant.

**APPEALS FROM INTERLOCUTORY JUDGMENTS
OR ORDERS IN THE SUPREME COURT RULE 63**

(2) In all such cases each respondent shall, on or before the day prior to the hearing of the appeal, transmit to the registrar one copy for the use of the court and furnish to each of the other parties one copy of a concise statement, without argument, of the facts and law relied on by him.

(3) A judge of the High Court may dispense with compliance with this sub-rule either in whole or in part.

63.03 Motion for Leave to Appeal from an Interlocutory Judgment or Order of a Judge of the High Court

(1) An appeal from an interlocutory judgment or order of a judge of the High Court, other than an appeal from an interim order in respect of any claim made in a divorce proceeding, shall not lie unless leave to appeal therefrom has been obtained from a judge of the High Court other than the judge appealed from.

(2) The motion for leave shall be made within 7 days from the making of the judgment or order appealed from or such further time as is allowed by the judge hearing the motion for leave to appeal.

(3) Leave to appeal shall not be granted unless,

(a) there is a conflicting decision by another judge or court upon the matter involved in the proposed appeal and it is, in the opinion of the judge hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the appeal involves matters of such importance that, in his opinion, leave to appeal should be granted.

(4) The judge granting leave shall briefly state his reasons in writing.

**APPEALS FROM INTERLOCUTORY JUDGMENTS
OR ORDERS IN THE SUPREME COURT RULE 63**

(5) If leave be granted, the appeal shall be to the Divisional Court and the Notice of Appeal shall be served and the appeal set down within 7 days after the granting of leave. Three copies of the Appeal Book, prepared in compliance with Rule 62.07, shall be delivered within 7 days thereafter, but, in the case of an appeal from an interlocutory order, the provisions of Rules 62.06 to 62.09 inclusive shall not apply.

(6) Except as provided in this sub-rule, the provisions of Rule 62 in so far as they are applicable to an appeal to the Divisional Court shall apply to an appeal from an interlocutory judgment or order of a judge of the High Court.

APPEALS

RULE 64 STAY OF PROCEEDINGS PENDING APPEAL

64.01 Where Proceedings are Stayed Without Order

(1) Except in a case where the judgment appealed from is an interlocutory judgment or awards an injunction, a mandamus, maintenance under the *Divorce Act (Canada)* or support under *The Family Law Reform Act 1978*, or the custody of or access to a child,

- (a) all proceedings to enforce the judgment and all proceedings pursuant to the judgment shall be stayed for a period of 30 days, unless otherwise ordered by the judge or officer presiding at the trial or hearing of the proceeding;
- (b) on the serving and filing of a Notice of Appeal, with proof of service, all proceedings to enforce the judgment and all proceedings pursuant to the judgment shall be stayed pending the disposition of the appeal.

(2) This sub-rule does not apply to a judgment obtained on consent or in default of defence.

64.02 Where Proceedings May be Stayed by Order

(1) Where any order appealed from is an interlocutory order, there shall be no stay of proceedings to enforce the order or of proceedings pursuant to the order pending the disposition of an appeal therefrom, unless ordered by the judge or officer who made the order or by any other judge or officer having concurrent jurisdiction.

(2) Where any judgment appealed from awards an injunction, a mandamus or maintenance under the *Divorce Act (Canada)* or support under *The Family Law Reform Act 1978*, or the custody of or access to a child, there shall be no stay of proceedings to enforce the judgment or of proceedings pursuant to the judgment pending the disposition of an appeal therefrom unless ordered by the judge presiding at the trial or hearing of the proceeding or by a judge of the appropriate appellate court.

**STAY OF PROCEEDINGS
PENDING APPEAL**

RULE 64

(3) No order made in aid of the enforcement of any interlocutory judgment or of any final judgment awarding an injunction, a mandamus, maintenance or support for a spouse or child, or the custody of or access to a child shall be stayed by an appeal from such order, unless otherwise ordered by the judge or officer who made the order, or a judge of the appropriate appellate court.

64.03 Effect of Stay of Proceedings

(1) Where proceedings are stayed by or pursuant to this rule, the stay shall not operate to prevent the settling, signing and entering of the judgment, the issuing of any Writ of Seizure and Sale and the filing thereof in the office of a sheriff, or recording it in a land titles office, but no other proceedings to enforce the judgment and no proceedings pursuant to the judgment shall be taken unless otherwise ordered by the judge or officer presiding at the trial or hearing of the proceeding or by a judge of the appropriate appellate court.

(2) Where proceedings are stayed by or pursuant to this rule and a Writ of Seizure and Sale has been filed in the office of a sheriff, the appellant is entitled to obtain a certificate from the registrar that proceedings have been stayed pending the appeal and, upon the certificate being filed with the sheriff, he shall not commence or continue to execute the Writ until he is satisfied that the appeal has been dismissed.

64.04 When Writ of Seizure and Sale May be Set Aside

Nothing in this rule shall prevent the court from setting aside the issuance and filing of a Writ of Seizure and Sale upon the appellant furnishing proper and sufficient security in lieu thereof.

PARTICULAR PROCEEDINGS

RULE 65 MORTGAGE ACTIONS

65.01 Foreclosure Actions

(1) *What Claims may be Joined*

A mortgagee may, in an action for foreclosure of the equity of redemption, claim payment of the mortgage debt by any party personally liable therefor and possession of the mortgaged property.

(2) *All Persons to be Joined*

(a) Unless, by reason of their number or otherwise, it is expedient to commence the action without making subsequent encumbrancers defendants, all persons who may be interested in the equity of redemption shall be made defendants in an action for foreclosure.

(b) Where an action for foreclosure is commenced without making subsequent encumbrancers defendants, the plaintiff may, upon obtaining judgment with a reference, apply to the master on the reference to add the subsequent encumbrancers as defendants; but the master may, in his discretion, disallow the additional costs occasioned thereby where he considers that such procedure was adopted without sufficient reason.

(3) *Right to Redeem must be Requested*

Where a defendant in an action for foreclosure requests the right to redeem the mortgaged property, he shall within the time limited for his defence, and whether a Statement of Defence is delivered or not, file a Request to Redeem (Form 65A) and, where the defendant filing such Request is a subsequent encumbrancer, the Request shall contain particulars of his claim verified by an affidavit.

MORTGAGE ACTIONS

RULE 65

(4) *Effect of Filing Request to Redeem*

Any defendant who has filed a Request to Redeem shall be entitled to,

- (a) seven days notice of the taking of the account of the amount due to the plaintiff;
- (b) three calendar months from the date of the taking of the account of the amount due to the plaintiff within which to redeem the mortgaged property unless he is a subsequent encumbrancer, in which case he shall only become so entitled if his claim is not disputed or, if disputed, is proved on a reference to the master.

(5) *Default Judgment*

In an action for foreclosure, where the defendant has been noted in default and has failed to file a Request to Redeem, the plaintiff may require the registrar to sign Judgment for Immediate Foreclosure (Form 65B) unless a reference is desired as to subsequent encumbrancers. Where a reference is desired as to encumbrancers, the plaintiff is entitled to Judgment for Foreclosure with a Reference (Form 65C); and, if no encumbrancer proves a claim, the master shall so certify and, upon confirmation of his report, the plaintiff shall be entitled to a Final Order of Foreclosure (Form 65D). If, upon the reference, a subsequent encumbrancer proves a claim, he shall be granted the usual period of redemption if so requested.

(6) *Taking the Account*

Where no reference as to subsequent encumbrancers is desired, the registrar may take the account of the amount due to the plaintiff and, where more than one party is entitled to redeem, determine the priority in which each is so entitled and sign a Judgment for Foreclosure (Form 65E). Where, on the taking of the account or in determining priorities, any dispute arises between the parties, or the registrar is in doubt, he may sign a Judgment for Foreclosure with a Reference. As an alternative to obtaining from the registrar judgment for immediate payment, the plaintiff may, where a reference is desired, obtain judgment for the amount to be found due on the reference.

MORTGAGE ACTIONS

RULE 65

(7) *May be Converted to a Sale*

- (a) Where a defendant in a foreclosure action having an interest in the equity of redemption, other than as a subsequent encumbrancer, desires a sale, but does not desire to defend the action, he may, within the time limited for defence, serve and file, with proof of service, a Request for Sale (Form 65F), and thereupon the plaintiff is entitled to obtain Judgment for Sale (Forms 65B, 65C or 65E as may be).
- (b) Where a defendant in a foreclosure action is a subsequent encumbrancer and desires a sale, but does not desire to defend the action or redeem the mortgaged property, he shall, within the time limited for defence, pay into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale and serve and file, with proof of service, a Request for Sale, together with particulars of his claim verified by affidavit, and the plaintiff is entitled to obtain Conditional Judgment for Sale (Form 65G).
- (c) Where a subsequent encumbrancer added on a reference to the master desires a sale, he shall within 10 days from the date of the service upon him of notice of the reference pay into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale and serve and file a Request for Sale and thereupon the master, on the return of the reference, shall make an order amending the judgment from a judgment for foreclosure to a judgment for sale; provided, however that no such order shall be made until after the subsequent encumbrancer requesting the sale has proved his claim to the satisfaction of the master.

MORTGAGE ACTIONS

RULE 65

- (d) Where any subsequent encumbrancer has paid into court the sum of \$250 as security for the costs of the plaintiff and of any other party having carriage of the sale and has served and filed a Request for Sale, the master on the return of the reference may require him to pay an additional sum of money into court to meet the expenses of the sale.

(8) *Application to Convert*

- (a) The master may on the motion of any party, either before or after judgment, direct a sale instead of a foreclosure and may direct an immediate sale without previously determining the priorities of encumbrancers or giving the usual or any time to redeem.
- (b) Where a foreclosure action has been converted into a sale action, the master may, on the motion of any party, either before or after judgment, direct a foreclosure instead of a sale where it is made to appear that the value of the property is unlikely to be sufficient to satisfy the claim of the plaintiff.

65.02 Sales Actions

(1) *What Claims may be Joined*

A mortgagee may, in an action for sale of the mortgaged property, claim payment of the mortgage debt by any party personally liable therefor and possession of the mortgaged property.

(2) *Persons to be Joined*

In an action for sale, subsequent encumbrancers shall not be made defendants on the commencement of the action, but shall be added as parties on the reference to the master.

MORTGAGE ACTIONS

RULE 65

(3) *Right to Redeem must be Requested*

Where the defendant in an action for sale requests the right to redeem the mortgaged property, he shall, within the time limited for his defence and, whether a Statement of Defence is delivered or not, file Request to Redeem.

(4) *Effect of Filing Request to Redeem*

Any defendant who has filed a Request to Redeem shall be entitled to,

- (a) seven days notice of the taking of the account of the amount due to the plaintiff.
- (b) three calendar months from the date of the taking of the account of the amount due to the plaintiff within which to redeem the mortgaged property unless he is only a subsequent encumbrancers, in which case he shall not be entitled to redeem.

(5) *Default Judgment*

In an action for sale, where the defendant has been noted in default and has failed to file a Request to Redeem, the plaintiff may obtain Judgment for Immediate Sale with a Reference (Form 65H).

(6) *Where Judgment for Sale Obtained in Foreclosure Action*

- (a) Where a judgment for sale has been obtained in a foreclosure action, a subsequent encumbrancer, whether or not he has filed a Request to Redeem the mortgaged property, shall be entitled to notice of the first appointment on the reference in the sale action.
- (b) If the plaintiff prefers that the sale be conducted by the defendant requesting the sale, he may so elect, and he shall serve upon such defendant and file, with proof of service, notice of such election, whereupon such defendant shall conduct the sale.

MORTGAGE ACTIONS

RULE 65

- (c) The master shall deal with the deposit in making his report.

65.03 Redemption Actions

(1) *What Claims may be Joined*

Any person interested in the equity of redemption may, in an action for redemption, claim possession of the mortgaged property.

(2) *Persons to be Joined*

- (a) Where, in an action for redemption, more than one person is interested in the equity of redemption, they all must be made parties, either as plaintiffs or defendants.
- (b) In an action for redemption, subsequent encumbrancers shall not be made defendants unless and until the plaintiff is declared foreclosed. If, upon the reference in an action for redemption, a subsequent encumbrancer is made a defendant and proves a claim, the usual period of redemption shall be granted.

(3) *Judgment*

- (a) In a redemption action, where the defendant has been noted in default, the plaintiff may require the registrar to sign Judgment for Redemption (Form 65 I).
- (b) Every judgment for redemption shall direct a reference to the master whether or not there are any subsequent encumbrancers.

65.04 Proceedings on the Reference

(1) *Applicable to All Mortgage Actions*

- (a) Upon a reference pursuant to a judgment for foreclosure or sale or redemption of a mortgaged property, the master shall determine who has any lien, charge or encumbrance thereon subsequent to the mortgage in question.

MORTGAGE ACTIONS

RULE 65

- (b) The plaintiff shall file with the master sufficient evidence to enable him to determine who appears to have any lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question.
- (c) Subject to Rule 65.03 (2)(b), the master shall direct all such persons as appear to have any lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question who were not made defendants on the commencement of the action to be made parties to the action and to be served with Notice of Reference to Added Party having Encumbrance (Form 65J).
- (d) Any person served with such notice may apply within 10 days from the date of the service to discharge, add to, vary or set aside the judgment or order making him a party.
- (e) Where it appears to the master that a person who was made a defendant on the commencement of the action, who has not been made a party to the action as a subsequent encumbrancer, may have some lien, charge or encumbrance upon the mortgaged property subsequent to the mortgage in question, the master shall direct such defendant to be served with Notice of Reference to Original Party having Encumbrance (Form 65K).
- (f) Subject to clauses (g) and (h) all persons who were made defendants on the commencement of the action shall be served with Notice of Reference to All Original Defendants (Form 65L), stating the names and nature of the claims of all those appearing to have a lien, charge or encumbrance upon the mortgaged property.

MORTGAGE ACTIONS

RULE 65

- (g) Any person made a defendant on the commencement of the action who is not a subsequent encumbrancer and has failed to file a Request to Redeem or a Request for Sale may be served with Notice of Reference to All Original Defendants by prepaid post addressed to him at his last known address.
- (h) Any subsequent encumbrancer who was made a defendant on the commencement of the action and has failed to file a Request to Redeem or a Request for Sale is not entitled to any notice of the reference.
- (i) On the reference, the master shall take an account of what is due to the plaintiff and to any subsequent encumbrancer who has proved a claim and shall tax or fix their costs and shall appoint a time and place for payment, unless the reference directed is for immediate sale, in which case the master shall proceed to give directions for the sale and defer the taking of an account until after the sale or an abortive sale. Where the sale is on the request of a subsequent encumbrancer, the master shall first satisfy himself that that subsequent encumbrancer has a valid claim.
- (j) One day shall be fixed for redemption for all of the parties entitled to redeem and, where more than one party is entitled to redeem, the master shall determine the priority in which each is so entitled.

MORTGAGE ACTIONS

RULE 65

- (k) On any proceeding for foreclosure or sale by, or for redemption against, an assignee of a mortgagee, the statement of the mortgage account, verified by affidavit of such assignee, shall be sufficient *prima facie* evidence of the state of such account and an affidavit shall not be required from the mortgagee or any intermediate assignee denying any payment to such mortgagee or intermediate assignee, unless the mortgagor or his assignee, or any party entitled to redeem, denies by affidavit the correctness of such statement of account.
- (l) The master in his report shall state the names of all persons who have been parties in his office, and all subsequent encumbrancers who have been served with notice of the reference and the names of such as have made default, and shall set forth the amount of the claims and the priorities of such as have attended and proved their claims who shall be certified as the only encumbrancers upon the property. The report shall bear the date upon which it is settled. Where any period fixed for redemption expires in less than 15 days after confirmation of the report, a new account shall be taken.
- (m) Subject to *The Mortgages Act*, upon payment of the amount found due, the mortgagee shall, unless the judgment otherwise directs, assign and convey the mortgaged property to the party making the payment, or to whom he may appoint, free and clear of all encumbrances incurred by the mortgagee and shall deliver up all deeds and writings in his custody or power relating thereto.

MORTGAGE ACTIONS

RULE 65

- (n) Where it is made to appear that by reason of their number or otherwise it is expedient to permit a mortgage action to proceed without the presence of all persons interested in the equity of redemption, other than subsequent encumbrancers, the court may give directions accordingly and may order such other persons to be made parties in the master's office after judgment.
- (o) Where on a reference it appears there are persons interested in the equity of redemption, other than subsequent encumbrancers, who are not already parties to the action, such persons may be made parties in the master's office upon such terms as may seem just and any such order shall direct a copy of the order, together with a copy of the judgment or order of reference and a Notice to Added Party (Form 65M) to be served on every such person.
- (p) A person so served may apply within 10 days from the date of such service to discharge, add to, vary or set aside the judgment or the order making him a party.
- (q) In mortgage actions in a county court, the clerk shall, subject to the directions of a judge, discharge all the duties and have all the powers of a registrar of the Supreme Court and may act as referee in any mortgage reference directed by a default judgment and in the taking of any accounts that may be referred to him by a judge. If it appears to the clerk that a mortgage reference directed by a default judgment is one which, in his opinion, ought to be dealt with by a judge, the clerk may apply to a judge for directions.

MORTGAGE ACTIONS

RULE 65

(2) *Applicable to Foreclosure Actions*

- (a) Where a party appearing to have any lien, charge or encumbrance subsequent to the mortgage in question, has been served with a notice under sub-rule (1)(c), (1)(e) or (1)(f) and fails to attend and prove his claim at the time and place appointed, the master shall so report and, upon confirmation of his report, the claim of any such party shall be deemed to have been foreclosed.
- (b) Where no defendant, other than a subsequent encumbrancer, has delivered a Statement of Defence or filed a Request to Redeem, and where no subsequent encumbrancer has proved a claim on the reference, the master shall so report; and, upon the confirmation of his report, a Final Order for Foreclosure may be obtained upon an application without notice.
- (c) Subsequent accounts shall from time to time be taken, subsequent costs taxed, and necessary proceedings had, for redemption by or foreclosure of the other parties entitled to redeem the mortgaged property, as if specific directions for all those purposes had been contained in the judgment.
- (d) Where more than one defendant entitled to redeem makes payment, any such defendant may apply to the master for an order for further directions, and thereupon sub-rule (2)(c) shall apply.
- (e) Where the judgment is for redemption or foreclosure, such proceedings are to be taken, and with the same effect as in an action for foreclosure, and in such case the last encumbrancer shall be treated as the owner of the equity of redemption.

MORTGAGE ACTIONS

RULE 65

- (f) In default of payment according to the report in a foreclosure action, a Final Order for Foreclosure may, on a motion without notice, be granted against the party in default.

(3) *Applicable to Sale Actions*

- (a) Where no defendant, other than a subsequent encumbrancer, has delivered a Statement of Defence or filed a Request to Redeem and where no subsequent encumbrancer has proved a claim on the reference, the master shall so report; and, upon the confirmation of his report, a Final Order of Sale (Form 65O) may be obtained upon a motion without notice.
- (b) In a sale action, any defendant having an interest in the equity of redemption, other than a subsequent encumbrancer, who has filed a Request to Redeem shall be entitled to redeem and, in order to redeem, he shall be required to pay the amount found due to the plaintiff and his costs.
- (c) If a judgment directs a sale on default in payment, then an order for sale may be obtained on a motion without notice.
- (d) Upon a judgment or order for sale being obtained, the property shall be sold with the approbation of the master, and the purchaser shall pay his purchase money into court unless otherwise directed by the master.
- (e) When so paid, the purchase money shall be applied in payment of what has been found due to the plaintiff and the other encumbrancers, if any, according to their priorities, together with subsequent interest and subsequent costs.

MORTGAGE ACTIONS

RULE 65

- (f) Where the purchase money is not sufficient to pay what has been found due to the plaintiff, the plaintiff is entitled, on a motion made without notice, to an order for payment of the deficiency by any defendant liable for the mortgage debt.
- (g) Where the judgment is for redemption or sale, such proceedings are to be taken, and with the same effect as in an action for sale, and in such case the last encumbrancer shall be treated as the owner of the equity for redemption.

(4) *Applicable to Redemption Actions*

- (a) Upon a reference under a judgment for redemption, the master shall take an account of what is due to the defendant, including costs, if any, and shall appoint a time and place for payment.
- (b) In a redemption action, on default of payment being made according to the report, the defendant is entitled, upon a motion without notice, to a final order of foreclosure against the plaintiff or to an order dismissing the action with costs to be paid by the plaintiff.
- (c) In a redemption action where the plaintiff is declared foreclosed, directions may be given, either by the final order foreclosing the plaintiff or by subsequent orders, that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure, or redemption or sale, as against any subsequent encumbrancers, or for the adjustment of the relative rights and liabilities of the original defendants as among themselves.

MORTGAGE ACTIONS

RULE 65

65.05 Where There has been a Change of Account

(1) Where the state of account as ascertained by a judgment, order or report is changed before the day appointed for payment, the mortgagee may, at least 15 days before the day appointed, give notice of the change of account to the person called upon to pay, giving particulars of the change of account and of the sum to be paid.

(2) If notice of change of account has been given and the sums therein mentioned appear properly to be allowed or paid, a final order may be granted without further notice or the master, on the motion for a final order, may in his discretion require notice to be given and may fix a new day.

(3) If any party to whom notice of change of account is given is dissatisfied, he may apply to the master to determine the amount to be paid and to fix a new day.

(4) If the state of account has been changed before the day appointed for payment and no such notice has been given and the amount payable for redemption is reduced, a new day shall be appointed for payment upon notice to the persons entitled to redeem but, if the amount payable has been increased, the mortgagee may apply for a final order without the appointment of a new day.

(5) If the state of the account has been changed after the day appointed for payment, it is not necessary to appoint a new day, unless the master on the motion for a final order so directs.

(6) In mortgage actions, the initial period allowed for redemption shall be three months, and when it becomes necessary to fix a new day for redemption after the lapse of the original period, the further time allowed shall be one month, unless otherwise ordered.

(7) Notwithstanding the preceding paragraph, the court may, on the motion of any party, extend or abridge the time redemption from time to time for such length of time and upon such terms as may seem just.

PARTICULAR PROCEEDINGS

RULE 66 PROCEEDINGS FOR ADMINISTRATION

66.01 Where Available

(1) A proceeding for the administration of the estate of a deceased person or for the execution of a trust may be commenced by a Notice of Application by any person claiming to be a creditor or beneficiary under the will or on the intestacy of the deceased or under any instrument of trust.

(2) Such a proceeding may also be commenced by an executor or administrator of the deceased or by a trustee.

(3) A judgment for the administration of any estate or for the execution of a trust may be refused if the judge is satisfied that the questions between the parties can be properly determined without such judgment.

(4) Where no accounts or insufficient accounts have been rendered, the judge may, instead of granting judgment for administration of the estate or for the execution of a trust, order that the executors, administrators or trustees render to the applicant a proper statement of their accounts and stay the proceeding in the meantime.

66.02 Where a Person under Disability is Interested

A judgment for the administration of an estate or for the execution of a trust in which a person under disability is interested shall not be made unless the person under disability is made a party respondent and the provisions of Rule 7 are complied with.

66.03 Where a Reference is Directed

(1) Where a Judgment for Administration (Form 66A) of an estate or for the execution of a trust directs a reference, the person to whom the reference is directed shall, subject to this rule, proceed to conduct the reference in accordance with the procedure prescribed by Rule 57.

PROCEEDINGS FOR ADMINISTRATION RULE 66

(2) On any such reference the person to whom the reference is directed shall have the power to deal with the real and personal property, including the power to give all necessary directions for its realization and shall finally wind up all matters connected with the estate or trust without any further directions, except where the special circumstances of the case require interim reports or interlocutory orders.

(3) In taking accounts in administration proceedings, interest shall be computed on the debts of the deceased from the date of the judgment and, on legacies, from the end of one year after the death of the deceased, unless another time of payment is directed by the will.

(4) All money realized from the estate shall forthwith be paid into court, and no money shall be distributed or paid out for costs or otherwise, except by order of a judge.

(5) On a motion for an order for distribution, the judge may review, amend or refer back the report or make such other order as may seem just.

PARTICULAR PROCEEDINGS

RULE 67 PARTITION PROCEEDINGS

67.01 Where Available

(1) Any person, not under disability, entitled to compel the partition of land or any estate or interest therein may, by Notice of Application, apply for partition or sale.

(2) A proceeding for partition on behalf of a person under disability may only be commenced by his litigation guardian and with leave of a judge.

67.02 Where a Person under Disability is Interested

A judgment for partition or sale of land or any estate or interest therein in which a person under disability is interested shall not be made unless the provisions of Rule 7 have been complied with.

67.03 Where a Reference is Directed

(1) Where a Judgment for Partition or Sale (Form 67A) of land or an estate or interest therein directs a reference, the person to whom the reference is directed shall, subject to this rule, proceed to conduct the reference in accordance with the procedure prescribed by Rule 57.

(2) On any such reference, the person to whom a reference is directed shall have the power to add any necessary parties, to ascertain the rights of the various parties interested and to tax the costs of any such parties.

(3) All money realized from a sale of the land or any estate or interest therein shall forthwith be paid into court, and no money shall be distributed or paid out for costs or otherwise, except by order of a judge.

(4) On a motion for an order for distribution, the judge may review, amend or refer back the report or make such other order as may seem just.

PARTICULAR PROCEEDINGS

RULE 68 PROCEEDINGS CONCERNING THE ESTATES OF MINORS

68.01 How Commenced

A proceeding for approval of the sale, mortgage, lease or other disposition of the whole or any part of the estate of a minor may be commenced by a Notice of Application, and shall be made to a judge upon notice to the Official Guardian.

68.02 Affidavit in Support

(1) The affidavit in support of any such proceeding shall state the nature and amount of the real and personal property to which the minor is entitled.

(2) If the proceeding is for approval of the sale, mortgage, lease or other disposition of real property, the affidavit shall show the nature and value of the real property to be disposed of, the annual profits therefrom and the present occupation thereof, as well as the facts relied upon to establish the necessity for the proposed disposition.

(3) If an allowance for maintenance is desired, the affidavit shall state the amount required and the facts relied upon to establish the need for such an allowance and, where applicable, shall show the necessity for resorting to the real property to provide such an allowance.

(4) If the appointment of a guardian is desired, the affidavit shall state the reason therefor and the facts relied upon to justify the appointment of the person proposed.

68.03 Where Consent Required

(1) Approval for the sale, mortgage, lease or other disposition of the whole or any part of the estate of a minor shall not be given unless the consent of any minor over the age of 16 years has been filed; but any such consent may be dispensed with if the Official Guardian does not object.

**PROCEEDINGS CONCERNING THE RULE 68
ESTATES OF MINORS**

(2) When so directed by the judge, the minor shall be produced before him or before a master and shall be examined apart as to his consent.

(3) Where the minor is out of Ontario, the judge may direct an inquiry to be made as to the consent of the minor in such manner as may seem just.

PARTICULAR PROCEEDINGS

RULE 69 PROCEEDINGS FOR JUDICIAL REVIEW

69.01 How Commenced

(1) A proceeding for judicial review under *The Judicial Review Procedure Act, 1971*, may be commenced by a Notice of Application and, subject to paragraph (2), shall be made to the Divisional Court.

(2) A proceeding for judicial review may be made to the High Court with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for having the application heard by the Divisional Court is likely to involve a failure of justice.

(3) Where a judge of the High Court refuses leave for a proceeding under paragraph (2), he may order that the proceeding be transferred to the Divisional Court.

69.02 Interim Order

On any proceeding for judicial review, a judge of the High Court may make such interim order as he considers proper, pending the final determination of the proceeding.

PARTICULAR PROCEEDINGS

RULE 70 PROCEEDINGS FOR QUIETING TITLES

70.01 How Commenced

(1) A proceeding under either Section 2 or Section 30 of *The Quieting Titles Act* shall be commenced by petition in the form prescribed by the Act, and shall be made to a judge of the High Court.

(2) No petition shall include two or more properties dependent on separate and distinct titles, but a petition may include any number of lands or parcels belonging to the same person and dependent on one and the same chain of title.

(3) Every petition under the Act shall be filed in the office of the local registrar at Toronto and may, at the option of the petitioner, be referred to the referee in Toronto or to any local referee.

(4) Where a petitioner desires to have the petition referred to a particular local referee, he shall endorse the petition accordingly.

(5) Where a petition is filed with no endorsement, it shall stand referred to the referee in Toronto, but a petition endorsed to a local referee shall stand referred to him.

(6) The Senior Master is the sole inspector of titles in respect of petitions filed under the Act and the sole referee in Toronto, but he may assign to any master such duties as inspector or referee as he from time to time deems advisable.

(7) Upon the filing of the petition, the local registrar at Toronto shall attend upon one of the judges of the High Court, designated by the Chief Justice of the High Court to hear petitions under the Act, for directions before it is referred to a referee for investigation.

**PROCEEDINGS FOR
QUIETING TITLES**

RULE 70

(8) Subject to the directions of the judge, the local registrar at Toronto shall transmit the petition to the referee but, where the petition is referred to a local referee, a copy of the petition shall be filed with the inspector of titles before it is transmitted to the local referee.

70.02 Material in Support

(1) The particulars necessary under the Act to support the petition shall be delivered or mailed by the petitioner or his solicitor to the referee.

(2) The petitioner shall deliver to the referee a plan and description of the property, verified by the affidavit of a qualified land surveyor who has personally inspected the property, and the affidavit shall state the manner in which the land described is indicated upon the plan, the names of the person or persons in actual occupation of the whole or any part thereof, the nature of the buildings upon the property and any evidence of continued possession that might be of assistance in the consideration of the petition.

(3) The petitioner shall also show, by affidavit or otherwise, whether possession has always accompanied the title under which he claims the property, or how otherwise, or shall show some sufficient reason for dispensing with such proof either wholly or in part.

70.03 Attendance of Petitioner

Where there is no contest, the attendance of the petitioner, or his solicitor, shall not be required on the examination of the title, except where, for any special reason, the referee directs such attendance.

70.04 Where Proof of Title is Defective

If, on such examination, the referee finds the proof of title defective, he shall deliver or mail to the petitioner, or his solicitor, a memorandum of such finding, stating shortly therein what the defects are, and he shall therein state as far as possible all the objections to the title.

**PROCEEDINGS FOR
QUIETING TITLES**

RULE 70

70.05 Where Good Title is Shown

(1) Where the referee finds that a good title is shown, he shall prepare the necessary advertisement and, unless the publication thereof is dispensed with under the Act, the advertisement shall be published in a newspaper having a general circulation in the county where the land is situate and in any other newspaper in which the referee thinks it proper to have it inserted.

(2) The referee shall endorse on the advertisement so prepared by him the name of the newspaper or newspapers in which it is to be published, and the number of insertions to be given therein respectively.

(3) Any notice of the petition to be mailed or served under Section 13 of the Act shall be prepared by the referee, and directions shall be given by him as to the persons on whom it is to be served.

70.06 Where Local Referee is Satisfied

(1) Where, in the opinion of a local referee, the petitioner is entitled to a certificate or conveyance under the Act and has published and given all notices required, the local referee shall endorse and sign at the foot of the petition the following memorandum: "I am of the opinion that the petitioner is entitled to a certificate of title (or conveyance) as claimed (or subject to the following encumbrances, etc., as the case may be)."

(2) The local referee shall thereupon transmit to the inspector of titles the petition and all papers relating thereto.

(3) The inspector of titles shall thereupon examine the papers carefully and, if he finds any defect in the evidence of title or in the proceedings, he shall, by correspondence or otherwise, point out the defect to the petitioner or his solicitor, or to the local referee, as the case may be, in order that the defect may be remedied before the petition and all papers relating thereto are transmitted to the judge for approval.

**PROCEEDINGS FOR
QUIETING TITLES**

RULE 70

70.07 Where Inspector of Titles or Referee at Toronto is Satisfied

(1) Where the inspector of titles or referee at Toronto finds that the petitioner is entitled to a certificate of title or a conveyance under the Act and has published and given all the notices required, the inspector of titles or referee at Toronto shall endorse and sign at the foot of the petition a memorandum to the same effect as is required from a local referee.

(2) The inspector of titles or referee at Toronto shall thereupon prepare the certificate of title or conveyance, engross and sign the same in triplicate and shall attend upon the judge therewith and with the petition and all papers relating thereto.

(3) On the certificate or conveyance being signed by the judge, the inspector of titles or referee at Toronto shall deliver or transmit the certificate of title or conveyance to the local registrar at Toronto to be sealed and registered.

(4) The local registrar shall thereupon retain one of the signed certificates or conveyances and shall deliver or transmit the other two, when so sealed and registered, to the petitioner or his solicitor.

(5) Unless the judge otherwise directs, the certificate of title or conveyance shall be dated as of the date of the filing of the petition.

(6) When a certificate of title or conveyance has been granted, the inspector of titles or referee at Toronto may, without further order, deliver on demand to the party entitled thereto, or his solicitor, all deeds and other documents of title filed in connection with the proceeding and shall take his receipt therefor.

**PROCEEDINGS FOR
QUIETING TITLES**

RULE 70

70.08 Appeal

The certificate of the inspector of titles or of a referee upon any contest before him shall be filed, and an appeal lies therefrom in the same way as from a report on a reference.

70.09 Alternative Proceeding by Notice of Application

(1) Where any person claims to be the owner of land, he may have any particular question that would arise upon a petition under *The Quieting Titles Act* determined in a proceeding commenced by a Notice of Application.

(2) Notice of any such application shall be given to all persons to whom notice would be given under *The Quieting Titles Act*, and the judge has the same power to determine and finally dispose of such particular question as he would have under that Act. It shall not, however, be necessary to comply with the provisions of sub-rule 70.05.

PARTICULAR PROCEEDINGS

RULE 71 MENTAL INCOMPETENCY PROCEEDINGS

71.01 Removal to Supreme Court

(1) Where the respondent in a proceeding under *The Mental Incompetency Act* requires the proceeding to be removed into the Supreme Court, he shall serve a Notice of Removal (Form 71A) upon the applicant and file the same, with proof of service, with the clerk of the county court in which the proceeding was brought, at least 2 days before the return date of the application for the declaration of mental incompetency or incapacity.

(2) Upon filing the Notice of Removal and proof of service thereof, the clerk of the county court shall forthwith transmit the papers to the local registrar of the Supreme Court in the county in which the proceeding was brought.

(3) Within 10 days of service upon him of the Notice of Removal, the applicant shall serve upon the respondent and file a notice of the time and place of the hearing of the proceeding before a judge of the Supreme Court and thereafter the practice and procedure of the Supreme Court shall apply to the proceeding.

71.02 Application for Confirmation

(1) Where an order has been made by a judge of a county court appointing a permanent committee or propounding a scheme of management or propounding a subsequent scheme not previously confirmed by a judge of the Supreme Court, the order shall be issued and filed with the clerk of the said county court.

(2) Unless the order has been appealed, the applicant shall file with the clerk of the said county court a notice of motion returnable before a judge of the High Court at Toronto for an order confirming the appointment of the committee and the scheme of management, and the clerk shall thereupon transmit the notice of motion, the order and all other papers filed in the proceeding to the local registrar of the Supreme Court at Toronto.

MENTAL INCOMPETENCY PROCEEDINGS RULE 71

(3) The notice of motion for confirmation shall be filed with the clerk of the said county court at least 10 days prior to the day upon which the motion is returnable.

(4) Upon receipt of the notice of motion and supporting material, the local registrar at Toronto shall place the motion on the appropriate list, and it shall not be necessary for counsel to appear in the first instance.

(5) The order shall be considered by the presiding judge and if, in his opinion, it is proper to confirm the appointment of the committee and the scheme of management, he shall confirm the same by so endorsing the notice of motion and an order, prepared by the solicitor for the applicant, shall be issued and entered in the Supreme Court at Toronto, and a copy thereof shall be filed with the clerk of the county court in which the proceeding was commenced.

(6) Where the presiding judge is not satisfied, he shall state shortly his reasons therefor in writing and either direct an amendment to be made before an order is issued or adjourn the motion and direct the local registrar at Toronto to give notice to the applicant of the adjourned hearing upon which counsel shall appear.

71.03 Passing Accounts

(1) Upon the death of a person who has been found mentally incompetent or mentally incapable under the provisions of *The Mental Incompetency Act*, the accounts of his committee shall be passed by a judge of the county court in which the proceeding is pending upon notice to his executor or administrator.

(2) Where the proceeding has been referred to a master, the accounts of the committee shall be passed by him.

(3) Upon payment over to the executor or administrator of the balance found to be due by the judge or master, as the case may be, and, upon entry of the order or confirmation of the report, the bond given by the committee shall be handed over for cancellation.

PARTICULAR PROCEEDINGS

RULE 72 DIVORCE PROCEEDINGS

72.01 Application of the Rules

Unless otherwise provided by any statute or by this rule, all of the rules, insofar as they apply to an action, shall apply, with any necessary modification, to a divorce proceeding.

72.02 Definitions

In a divorce proceeding, unless the context otherwise requires,

decree nisi or *decree absolute* of divorce is a judgment;

judge means a judge of the Supreme Court and includes a local judge;

matrimonial offence means a matrimonial offence as defined in Section 3 of the *Divorce Act (Canada)*; and

originating process includes a petition or a counter-petition against an added respondent by counter-petition.

72.03 Joinder of Parties

(1) Any person against whom any relief is claimed in a divorce proceeding shall be made a party thereto.

(2) Except as provided in paragraph (4), the name of every person alleged to have been involved in any matrimonial offence shall be pleaded, if the name of that person is known to the party pleading such allegation; but, unless the court otherwise orders no such person need be made a party to the proceeding unless some relief is being claimed against him.

(3) Where the name of such person is subsequently ascertained, the pleadings shall be amended accordingly, and he shall be served with a copy of the amended pleadings as hereinafter provided.

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(4) Where it is alleged that the respondent spouse was involved in a matrimonial offence that constitutes a criminal offence for which he has been convicted in a court of competent jurisdiction in Canada, the name of the other person who was involved in such offence shall not be pleaded, nor shall he be made a party to the proceeding unless the court otherwise orders.

72.04 Petition

(1) A divorce proceeding shall be commenced by the issuing of a Petition for Divorce (Form 72A) in the manner provided for the issuing of an originating process.

(2) In a divorce proceeding, the party commencing the proceeding shall be called the petitioner and the opposite party, the respondent.

72.05 Service of Petition

(1) Unless otherwise ordered or provided, a divorce petition, and all documents required to be served therewith, shall be served on the respondent spouse and the petition shall be served on every other respondent and on every person alleged in the petition to have been involved in a matrimonial offence.

(2) A respondent shall be served in the manner prescribed for service of originating process.

(3) A person, other than a party, who is alleged in the petition to have been involved in a matrimonial offence, may be served by mailing a copy of the petition to him at his last known address.

(4) Where a person who is alleged in a petition to have been involved in a matrimonial offence, other than a party, dies before he has been served with the petition, the petition need not be served on his personal representative.

(5) A petition shall not be served by the petitioner.

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(6) A petition may be served out of Ontario without leave.

(7) Where substituted service of a petition by publication in a newspaper is ordered by the court, the publication shall be according to Form 72B.

(8) Where any person required to be served with a petition cannot be found, the court may dispense with such service if it is satisfied that reasonable efforts have been made to locate such person and that no method of substitutional service is likely to come to his attention.

72.06 Time for Service of Petition

A petition shall be served within six months of the issuing thereof.

72.07 Pleadings

(1) In a divorce proceeding, pleadings shall consist of the Petition and an Answer (Form 72C) and may include a Reply (Form 72D).

(2) In a counter-petition for divorce, pleadings shall consist of the Counter-Petition (Form 72E) and an Answer to Counter-Petition (Form 72F) and may include a Reply to Answer to Counter-Petition (Form 72G).

72.08 Answer

(1) A respondent who wishes to oppose a divorce petition shall deliver an Answer thereto,

- (a) within 20 days after service of the Petition where the respondent is served in Ontario;
- (b) within 40 days after service of the Petition where the respondent is served elsewhere in Canada or within the United States of America;
or
- (c) within 60 days after service of the Petition where the respondent is served anywhere else in the world.

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(2) Any person, other than a party, who is alleged in a petition to have been involved in a matrimonial offence, may within the time limited for delivery of the Answer, apply to the court to be added as a respondent in the proceeding and for leave to deliver an Answer.

(3) Where a person who is alleged in a petition to have been involved in a matrimonial offence, other than a party, dies after he has been served with the Petition and before he has been added as a respondent in the proceeding, his personal representative may apply to be added as a respondent therein and for leave to deliver an Answer.

72.09 Reply

A Reply, if any, shall be delivered within 10 days after delivery of the Answer.

72.10 Counter-Petition

(1) Where a respondent claims any relief other than dismissal of the petition, with or without costs, he shall do so by way of counter-petition.

(2) Where a respondent counter-petitions against the petitioner, he may join as an added respondent by counter-petition any other person, whether a party to the proceeding or not, who is a necessary or proper party to the counter-petition.

(3) A respondent shall plead his answer and counter-petition in one document to be called an Answer and Counter-petition.

(4) Where there is an added respondent by counter-petition, the Answer and Counter-Petition shall contain a second style of cause showing who is the petitioner by counter-petition and who are the respondents by counter-petition.

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72.11 Time for Delivery of Answer and Counter-Petition

(1) Where a counter-petition is against a petitioner only, the Answer and Counter-Petition shall be delivered within the time limited for delivery of the Answer in the main proceeding.

(2) Where a counter-petition is against the petitioner and an added respondent by counter-petition, the Answer and Counter-Petition shall be issued within the time limited for delivery of the Answer in the main proceeding, and shall be served,

- (a) on the petitioner, within the time limited for delivery of the Answer in the main proceeding; and
- (b) on the added respondent by counter-petition, together with a copy of the Petition in the main proceeding, within 30 days thereafter.

(3) Personal service of an Answer and Counter-Petition is not required on the petitioner or on an added respondent by counter-petition who is a respondent in the main proceeding unless such respondent has failed to deliver an Answer in the main proceeding, in which case personal service is required whether or not he has been noted in default in the main proceeding.

(4) An Answer and Counter-Petition shall also be served, together with a copy of the Petition, on every person alleged in the counter-petition to be involved in a matrimonial offence, in the manner prescribed for the service of a petition on any such person.

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72.12 Answer to Counter-Petition

(1) The petitioner shall deliver his Answer to Counter-Petition within the time limited for the delivery of a Reply, if any, in the main proceeding and, where such a Reply is delivered, his Answer to Counter-Petition shall be joined thereto.

(2) An added respondent by counter-petition shall deliver his Answer to Counter-Petition within 20 days after service of the Answer and Counter-Petition.

(3) Any person, other than a party, who is alleged in a counter-petition to have been involved in a matrimonial offence may, within the time limited for the delivery of the Answer to Counter-Petition, apply to the court to be added as a respondent by counter-petition and for leave to deliver an Answer to Counter-Petition.

(4) Where a person who is alleged in a counter-petition to have been involved in a matrimonial offence, other than a party, dies after he has been served with the Counter-Petition and before he has been added as a respondent by counter-petition, his personal representative may apply to be added as a respondent therein and for leave to deliver an Answer to Counter-Petition.

72.13 Reply to Answer to Counter-Petition

A Reply to Answer to Counter-Petition, if any, shall be delivered within 10 days after delivery of the Answer to Counter-Petition.

72.14 Financial Statement

(1) Where a petition contains a claim for corollary relief, the petitioner shall deliver a Financial Statement (Form 72H) with the Petition and the respondent spouse shall deliver a Financial Statement with the Answer.

(2) Where no claim for corollary relief is made in the Petition, but such a claim is asserted in the Counter-Petition, the petitioner by counter-petition shall deliver a Financial Statement with the Answer and Counter-Petition and the respondent spouse by counter-petition shall deliver a Financial Statement with the Answer to Counter-Petition.

DIVORCE PROCEEDINGS

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(3) Where a Financial Statement is required to be delivered with a Petition or Counter-Petition or an Answer thereto, the Petition or Counter-Petition or the Answer thereto shall not be accepted by a registrar for issuing or filing without the Financial Statement.

(4) Where a respondent to a Petition or Counter-Petition does not intend to defend a claim for corollary relief, he shall nevertheless deliver his Financial Statement within the time limited for the delivery of his Answer.

(5) Where a respondent to a Petition or Counter-Petition fails to deliver his Financial Statement within the time limited for the delivery of his Answer, the petitioner or counter-petitioner may apply to the court without further notice to the respondent for an order requiring the delivery of such a Statement within the time prescribed by the order.

(6) A party may be cross-examined on his Financial Statement,

- (a) for use upon a pending motion for interim relief, in which case the cross-examination may be used in evidence at the trial in the same manner as an examination for discovery; or
- (b) on his examination for discovery.

72.15 Children

(1) Where there are *children of the marriage*, as defined by Section 2 of the *Divorce Act (Canada)*, particulars thereof shall be pleaded in the Petition or Counter-Petition, in which case,

- (a) the Petition or Counter-Petition and all documents required to be served therewith, shall be served on the Official Guardian at Toronto forthwith after service thereof on the respondent spouse;

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- (b) all other pleadings shall be served on the Official Guardian within the time limited by the rules for service thereof on the parties to the proceeding;
- (c) one copy of the report of the Official Guardian and the supporting affidavit, if any, shall be served by the Official Guardian on the solicitor for each spouse and, where there is no such solicitor, on each spouse personally, or by mailing a copy thereof addressed to him at his last known address, within 60 days of the service on the Official Guardian of the Petition or Counter-Petition, as the case may be, and the Official Guardian shall file a copy of his report, together with proof of such service forthwith in the office where the Petition was issued;
- (d) either spouse may dispute any statement in the report or any supporting affidavit by serving a concise statement of the nature of such dispute on the other spouse and on the Official Guardian at Toronto, and by filing the same, together with proof of such service, within 15 days of the service of the report on him;
- (e) no Petition or Counter-Petition shall be tried until all disputes have been filed or the time for filing disputes has expired or has been waived by the consent of the parties filed;
- (f) a person who has made an affidavit verifying the report of the Official Guardian is not liable to be cross-examined thereon except by leave; and

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- (g) the Official Guardian has the right to discovery in respect of any matter relating to the custody, maintenance and education of a child to whom this rule applies, whether or not any such matter is in issue in the proceeding.

(2) Where a petition or counter-petition contains a claim for the custody of or access to any child of the marriage as defined by Section 2 of the *Divorce Act (Canada)*, recourse may be had to the provisions of Rule 73.04.

72.16 Intervention Before Decree Nisi

(1) At any time prior to the granting of the Decree Nisi, the Attorney General, on notice to all parties, may apply to a judge for leave to intervene for the purpose of showing why the Decree Nisi should not be granted.

(2) Where the judge grants leave to intervene, he shall give such directions with respect to the participation of the Attorney General in the proceeding as may seem just.

72.17 Place of Trial

(1) The petitioner shall name the place of trial in the petition and the place to be named shall be the place where the court normally sits in the county in which either spouse ordinarily resides or, where the petitioner is resident out of Ontario, the county in which the respondent spouse ordinarily resides.

(2) The proceeding shall be tried at the place so named, unless otherwise ordered on the motion of the petitioner or of any respondent who has delivered an Answer. On any such motion, the applicant must show that it is just and convenient that the proceeding be tried elsewhere.

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72.18 Trial Before Local Judge or High Court

(1) The petitioner, in addition to naming the place of trial, shall specify in the petition whether the proceeding will be set down for trial before the local judge of the High Court, or at the regular sittings of the High Court, at the place of trial named in the petition.

(2) At any time before the commencement of the trial, whether or not the proceeding has been set down for trial, the petitioner, or any respondent who has delivered an Answer, may apply,

- (a) to a judge of the High Court for an order that the proceeding be tried at a regular sittings of the High Court at the place of trial named in the petition, instead of before a local judge of the High Court; or
- (b) to a local judge of the High Court at the place of trial named in the petition for an order that the proceeding be tried before a local judge of the High Court at the place of trial named in the petition, instead of at a regular sittings of the High Court; provided that, where the proceeding is defended, such order may only be made upon the consent of all parties.

72.19 Notice of Trial

(1) Where a proceeding is set down for trial as proposed by the petitioner in the Petition and is not defended, it shall not be necessary to serve or file a Notice of Trial.

(2) In all other cases, a Notice of Trial shall be served and filed.

72.20 Trial

(1) No Petition shall be tried until a certificate or report issued subsequent to the filing of the Petition pursuant to regulations under the *Divorce Act (Canada)* as to prior pending Petitions presented by either spouse has been received by the registrar and attached to the record.

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(2) Where, before proceeding to the hearing of the evidence, a judge grants an adjournment of the trial under sub-section 1 of Section 8 of the *Divorce Act (Canada)*, the application for resumption of the trial under sub-section 2 of the said section shall be by Notice of Motion and may be made to any judge.

(3) Where, after proceeding to the hearing of the evidence, a judge grants an adjournment of the trial under sub-section 1 of Section 8 of the *Divorce Act (Canada)*, the application for resumption of the trial under sub-section 2 of the said section shall be by Notice of Motion to the same judge.

(4) On the trial of any divorce proceeding, the judge may adjourn the trial for any reason to such time and place as may seem just and, in a proper case, may direct that the registrar forthwith give notice of the proceeding, the state thereof and the reasons of the court for such direction to the Attorney General.

(5) Where such notice is given, the Attorney General shall appear, in person or by counsel, on the adjourned trial and make his submissions and otherwise participate in the proceedings to the extent he may deem necessary and the judge may allow.

72.21 Reference to a Family Law Commissioner

(1) Any judge of the High Court may refer to a Family Law Commissioner any question or issue arising under the *Divorce Act (Canada)* relating to corollary relief for inquiry and report.

(2) Where a reference is directed under the preceding paragraph, the Family Law Commissioner shall inquire into any question or issue referred to him and he shall report back to the judge directing the reference in such manner and at such time as the judge may direct.

(3) Any party who appeared before the Commissioner shall have the right to be heard when the judge is considering the report, and shall be served with a copy of the report and with notice of the time and place appointed for so doing.

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72.22 Decree Nisi

(1) In a Decree Nisi (Form 72 I) the name of a co-respondent shall not appear in the style of cause unless some relief has been granted against him.

(2) Unless otherwise ordered by the trial judge, the party to whom a Decree Nisi has been granted shall forthwith serve a copy thereof on the party against whom it was granted by mailing the same addressed to him at his last known address.

72.23 Showing Cause After Decree Nisi

(1) During the period between the granting of the Decree Nisi and the granting of the Decree Absolute, any person, including the Attorney General, may apply to a judge for leave to show cause why the Decree Nisi should not be made absolute.

(2) A copy of the Notice of Motion shall be served on the Attorney General, unless he is the applicant.

(3) The judge may dismiss the motion or may rescind the Decree Nisi or may direct the trial of an issue and may give such directions and impose such terms as may seem just.

72.24 Decree Absolute

(1) A motion to make a Decree Nisi absolute shall be made to a judge by filing in the office in which the proceeding was commenced, on any day after the expiration of the period that must intervene before the Decree Nisi may be made absolute, a notice of motion, together with the original Decree Nisi, or a certified copy thereof, and proof of service thereof on the party against whom it was granted, unless such service was dispensed with.

(2) Any such motion shall be supported by an affidavit, sworn after the expiration of the period that must intervene before the Decree Nisi may be made absolute, as to whether or not,

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- (a) an appeal from the Decree Nisi is pending or any appeal taken has been abandoned or dismissed;
- (b) an order has been made extending the time for appealing from the Decree Nisi and, if so, whether such time has expired without an appeal having been taken; and
- (c) a Notice of Motion to show cause why the Decree Nisi should not be made absolute has been filed or served.

(3) Within 10 days thereafter the registrar shall cause the Notice of Motion and the material filed in support thereof to be presented to a judge sitting anywhere in Ontario, who may pronounce a Decree making the Decree Nisi absolute, without the appearance of counsel, and so endorse the Notice of Motion.

(4) Where a judge decides that a Decree Nisi should not be made absolute without the appearance of counsel, he shall adjourn the motion and direct that notice of such adjournment be given by the registrar to the applicant and may direct that the applicant serve notice of the motion on any other person.

(5) The style of cause in the Decree Absolute (Form 72J) shall be the same as in the Decree Nisi.

(6) Where a Decree Absolute has been granted, the registrar shall prepare, sign and enter the Decree.

(7) Where a party to whom a Decree Nisi has been granted fails to apply to have the Decree made absolute within one month after the earliest date on which he could have done so, the opposite spouse may apply to have the Decree Nisi made absolute, on notice to the party to whom the Decree Nisi has been granted, but without filing proof of service of the Decree Nisi. Where the Decree Nisi has not been settled, signed or entered, the judge, on the hearing of the motion, may direct this to be done.

DIVORCE PROCEEDINGS

RULE 72

72.25 Corollary Relief

(1) A Notice of Motion for interim relief under the *Divorce Act (Canada)* may be served with a Petition or Counter-Petition or at any time thereafter.

(2) At the hearing of a motion for interim relief under the *Divorce Act (Canada)*, the court shall consider whether or not a pre-trial conference is necessary or desirable at that stage of the proceeding and may conduct a pre-trial conference before disposing of the motion

(3) Rule 50 shall apply, with any necessary modification, to a pre-trial conference under paragraph (2).

(4) Except with the consent of the parties, the judge or officer who conducts the pre-trial conference under paragraph (2) shall not proceed with the motion for interim relief.

(5) In exercising his discretion as to costs, the judge or officer who hears a motion for interim relief under paragraph (1) shall take into account any offer to settle the claim for interim relief or the failure to make such an offer.

(6) Where a party fails to comply with an order for interim relief under the *Divorce Act (Canada)* and the court is satisfied as to the ability of such party to comply with the order, the trial of the proceeding may be postponed or an order may be made striking out any pleading or affidavit of the party in default.

(7) An appeal from an order for interim relief in respect of any claim made in a divorce proceeding shall be to the Court of Appeal without leave, and shall be heard by one justice of appeal.

(8) An application to vary or rescind an order for corollary relief granted at the trial shall be made to a judge sitting at the place named by the applicant in his Notice of Application, unless otherwise ordered by the court.

DIVORCE PROCEEDINGS

RULE 72

(9) An applicant for an order to vary or rescind an order for corollary relief granted at the trial, other than an order for access to children, shall deliver a financial statement in Form 72H with the Notice of Application.

(10) The judge to whom such an application is made may order the respondent to deliver a financial statement in Form 72H within such time as may be prescribed in the order.

72.26 Registration of Orders for Corollary Relief

(1) Where an order has been made by any other superior court in Canada under Sections 10 or 11 or the *Divorce Act (Canada)*, the registration of such order pursuant to Section 15 of the said Act shall be effected by filing an exemplification or certified copy of the order in the office of the Registrar of the Supreme Court, whereupon it shall be entered as an order of the court.

(2) The exemplification or certified copy of the order may be filed with the Registrar by forwarding it to him by ordinary mail, accompanied by,

- (a) a written request that it be registered pursuant to the said Act; and
- (b) a certified cheque or money order in the amount of \$5.00.

72.27 Costs

On the taxation of costs in a divorce proceeding, the proceeding shall be treated as uncontested, and such costs shall be taxed in accordance with Tariff "B" unless the trial judge otherwise directs.

PARTICULAR PROCEEDINGS

RULE 73 FAMILY LAW REFORM ACT PROCEEDINGS

73.01 Definitions

In this rule,

Act means *The Family Law Reform Act, 1978*;

applicant means a person making an application under the Act and includes a plaintiff, a plaintiff by counterclaim, a petitioner and a counter-petitioner for divorce;

originating process means a statement of claim, counterclaim, petition for divorce, counter-petition for divorce or notice of application that initiates an application under the Act;

respondent includes a defendant; and

responding document means a statement of defence, a defence to counterclaim, an answer to a petition for divorce, an answer to a counter-petition for divorce or an affidavit in opposition to a notice of application.

73.02 How Commenced

(1) An application under the Act may be commenced by the filing of an originating process.

(2) Where the Ministry of Community and Social Services or a municipality makes an application under the Act for an order for the support of a dependant, the applicant shall serve upon the dependant a copy of the originating process.

73.03 Statements of Financial Information

(1) Where an application is made under Sections 4, 18 or 21 of the Act, a Financial Statement (Form 72H) shall be delivered with the originating process, together with a Notice to File Financial Statement (Form 73A).

**FAMILY LAW REFORM ACT
PROCEEDINGS**

RULE 73

(2) A party served with the Financial Statement of the applicant and Notice to File Financial Statement shall deliver his own Financial Statement with his responding document.

(3) Where a Financial Statement is required to be delivered with an originating process or a responding document, the originating process or the responding document shall not be accepted by the registrar for filing without the Financial Statement.

(4) Where a respondent does not intend to defend an application, he shall nevertheless deliver his Financial Statement within the time limited for the delivery of his responding document.

(5) Where a respondent fails to comply with a Notice to File Financial Statement the applicant may apply to the court without further notice to the respondent for an order requiring the delivery of such a statement within the time prescribed by the order.

(6) A party may be cross-examined on his Financial Statement,

- (a) for use upon the hearing of the application where the proceeding was commenced by a Notice of Application; or
- (b) for use upon a pending motion for interim relief, in which case the cross-examination may be used in evidence at the hearing of the application as if it were taken for that purpose, or at the trial in the same manner as an examination for discovery; or
- (c) on his examination for discovery.

(7) In a divorce proceeding, this sub-rule only applies to the petitioner and the respondent spouse in a petition or counter-petition.

FAMILY LAW REFORM ACT
PROCEEDINGS

RULE 73

73.04 Custody and Access Disputes

(1) *Separate Representation for Children*

In any proceeding where the custody of or access to a child is in issue, the court may, where it appears necessary in the interests of the child so to do, order that any such child be separately represented in a proceeding by a solicitor appointed by the court.

(2) *Mediation*

- (a) In any proceeding where the custody of or access to a child is in issue, the court may, at any time and upon such terms as may seem just, appoint a qualified person to act as a mediator for the purpose of assisting the parties to resolve, by agreement, any issue concerning the custody of, or access to, a child.
- (b) Any communication made in the course of the mediation process shall be privileged and no report of the mediator shall be admitted in evidence nor shall he be called as a witness at the trial or hearing of the proceeding.

(3) *Assessment*

- (a) In any proceeding where the custody of or access to a child is in issue, the court may, at any time and upon such terms as may seem just, appoint a qualified person to assess the needs of the child and the ability of any persons to meet those needs to whom the custody of or access to the child might be awarded, and order the child and any such persons to attend before the person so appointed.

**FAMILY LAW REFORM ACT
PROCEEDINGS**

RULE 73

- (b) Any person appointed by the court to make such an assessment shall file a full report of his assessment with the court and serve a copy thereof on each of the parties to the proceeding within the time prescribed by the order appointing him.
- (c) Any such person may be a witness in the proceeding and, if called as a witness, shall be subject to cross-examination by any party to the proceeding.

(4) *Remuneration*

The court may fix the remuneration of any person appointed under this sub-rule, and shall determine the liability of the parties for the remuneration of any such person.

73.05 Place of Trial or Hearing

Except where the application is made in a divorce proceeding, the place of trial or hearing of an application under the Act shall be governed by the provisions of Rule 45 and, for the purposes of that rule, an application under the Act made by notice of application shall be treated as if it was an action, whether it is made in the Supreme Court or in a county court.

73.06 Reference to a Family Law Commissioner

The provisions of Rule 72.21 shall apply, with any necessary modification, to any question or issue arising under the Act.

73.07 Interim Relief

(1) A Notice of Motion for interim relief under the Act may be served with an originating process or at any time thereafter.

(2) At the hearing of a motion for interim relief under the Act, the court shall consider whether or not a pre-trial conference is necessary or desirable at that stage of the proceeding and may conduct a pre-trial conference before disposing of the motion.

**FAMILY LAW REFORM ACT
PROCEEDINGS**

RULE 73

(3) Rule 50 shall apply, with any necessary modification, to a pre-trial conference under paragraph (2).

(4) Except with the consent of the parties, the judge or officer who conducts the pre-trial conference under paragraph (2) shall not proceed with the motion for interim relief.

(5) In exercising his discretion as to costs, the judge or officer who hears a motion for interim relief under paragraph (1) shall take into account any offer to settle the claim for interim relief or the failure to make such an offer.

(6) Where a party fails to comply with an order for interim relief under the Act and the court is satisfied as to the ability of such party to comply with the order, the trial or hearing of the application may be postponed or an order may be made striking out any pleading or affidavit of the party in default.

73.08 Where Proceeding is Transferred

(1) Where a proceeding is transferred to a court having other jurisdiction under sub-section 2 of Section 2 of the Act, the proceeding shall continue in that court without duplication of any steps taken prior to the transfer unless that court otherwise directs.

(2) A court to which a proceeding is transferred may, on application, give directions for the conduct of the proceeding.

(3) Any interim order made in a proceeding prior to a transfer to a court having other jurisdiction shall remain in force according to its terms, unless the court otherwise orders.

**FAMILY LAW REFORM ACT
PROCEEDINGS**

RULE 73

73.09 Appeal to County Court from Provincial Court

(1) An appeal to a county court under the Act shall be made by notice of appeal served upon all parties whose interests are affected by the appeal within 15 days after the date of the order appealed from.

(2) The notice shall state the relief asked for and shall set forth the grounds of appeal and no other grounds may be argued except by leave of the court.

(3) The appellant shall, at least 10 days before the hearing of the appeal, file with the clerk of the appropriate county court and serve upon each respondent a record containing,

- (a) an index;
- (b) the notice of appeal;
- (c) the order appealed from and any reasons given by the judge who made the order;
- (d) a concise statement, without argument, of the facts and law relied on by the appellant;
- (e) a transcript of the evidence;
- (f) such other material as is necessary for the due hearing of the appeal.

(4) Each respondent shall, at least 3 days before the hearing of the appeal, file with the clerk and serve on each of the other parties to the appeal one copy of a concise statement, without argument, of the facts and law relied on by the respondent.

(5) A judge of the county court may, before or at the hearing of the appeal, dispense with compliance with this rule either in whole or in part.

**FAMILY LAW REFORM ACT
PROCEEDINGS**

RULE 73

73.10 Warrant for Arrest

The warrant for the arrest of a debtor or respondent referred to in Section 24 of the Act shall be in Form 73B.

73.11 Recognizance

(1) A recognizance entered into under an order made pursuant to Section 34 of the Act shall be in Form 73C and shall be entered into before the registrar or such other officer of the court as a judge may direct.

(2) Where a party is in breach of a condition of the recognizance, a judge, on the application of an opposite party or of the Attorney General, may order that a Writ of Seizure and Sale be issued to enforce the recognizance.

PARTICULAR PROCEEDINGS

RULE 74 CHILD WELFARE ACT PROCEEDINGS

74.01 Definition

In this rule,

Act means *The Child Welfare Act, 1978*.

74.02 Appeals to a County Court

(1) An appeal to a county court under Sections 43 and 84 of the Act shall be made by notice of appeal served by the appellant within 30 days after the making of the decision being appealed upon the clerk of the court that made the decision and filed, with proof of service, with the clerk of the county court within 5 days after such service.

(2) Upon the filing of the notice of appeal, the appellant shall mail a copy of the notice of appeal to,

- (a) all other persons entitled to appeal the decision; and
- (b) in the case of an appeal under Section 43 of the Act, all other persons entitled to notice of a hearing under sub-section 7 of Section 28 of the Act who appeared at the hearing.

(3) The notice of appeal shall state the relief asked, and shall set forth the grounds of appeal, and no other grounds may be argued except by leave of the court.

(4) The record on the appeal shall contain the material prepared for the purpose under the rules of the provincial courts (family division) and sent to the county court by the court that made the decision, and shall include,

- (a) an index;
- (b) a copy of the notice of appeal;

CHILD WELFARE ACT PROCEEDINGS RULE 74

- (c) a copy of the decision being appealed and any reasons given by the court that made the decision;
 - (d) a transcript of the evidence; and
 - (e) such other material as is necessary for the hearing of the appeal.
- (5) The appeal shall be heard within 30 days after the filing of the transcript of the evidence.
- (6) Subject to sub-section 7 of Section 43 and sub-section 5 of Section 84 of the Act, a judge of the county court may dispense with compliance with this sub-rule either in whole or in part.

OFFICES AND OFFICERS

RULE 75 OFFICE OF THE ACCOUNTANT

75.01 Payment into Court

(1) All money to be paid into court shall be paid into the Canadian Imperial Bank of Commerce at Toronto or into some branch of that bank or into some other chartered bank designated for that purpose from time to time by the Lieutenant Governor in Council.

(2) Any person paying money into court shall obtain from the Accountant or the appropriate registrar a direction to the bank to receive the money.

(3) Any person applying for a direction to the bank shall file with the Accountant or the appropriate registrar a certified or authenticated copy of the judgment, order or report under which the money is payable. Where the direction to the bank is obtained elsewhere than in Toronto, such documents shall be sent to the Accountant forthwith.

(4) On receiving the money, the bank shall give a receipt therefor in duplicate. One copy of the receipt therefor in duplicate. One copy of the receipt shall be delivered to the person making the deposit, and the other shall be mailed or delivered to the Accountant the same day.

(5) Any person paying money into court is entitled to credit therefor as of the date on which it was deposited.

75.02 Payment out of Court

(1) Any person entitled to payment of money out of court shall file with the Accountant a request therefor in writing, together with a certified or authenticated copy of the judgment, order or report entitling him to the money and, where there is a right of appeal therefrom, an affidavit that the time limited for appeal has expired and that no appeal has been set down.

OFFICE OF THE ACCOUNTANT

RULE 75

(2) Where costs are directed to be paid out of money in court, the solicitor for the party entitled to receive the costs is entitled to have the cheque drawn in his favour upon filing with the Accountant an affidavit by the solicitor that he is entitled to receive such costs, that he has not been paid his costs or any part thereof, and that the costs, in respect of which payment is sought, are justly due to him. If there has been a change in solicitor during the course of the litigation, that fact shall be shown in the affidavit, and the consent of both solicitors shall be filed.

(3) Unless otherwise ordered, any money in court to the credit of a minor and to which he is entitled on attaining his majority shall be paid out to him with accrued interest upon application to the Accountant supported by an affidavit proving the age and identity of the minor to the satisfaction of the Accountant.

(4) Where money is in court to the credit of a person under disability, it may be paid out upon filing with the Accountant a certified or authenticated copy of the fiat of a judge who may, in the fiat, direct payment of the costs of the application to the solicitor and dispense with the affidavit required by paragraph (2).

(5) Where money or securities in court are to be paid out or transferred to a person named in the judgment, order or report, such money or securities or any portion thereof for the time being remaining unpaid or untransferred may, on proof to the satisfaction of the Accountant of the death of such person whether before, on, or after the date of the judgment, order or report, and that his personal representatives are entitled thereto, be paid or transferred to such personal representatives or the survivors or survivor of them.

(6) Where money or securities in court are to be paid out of court or transferred to the personal representative of any person, such money or securities may, upon proof to the satisfaction of the Accountant of the death of any of them whether before, on or after the date of the judgment, order or report, be paid to the survivors or survivor of them.

OFFICE OF THE ACCOUNTANT

RULE 75

75.03 Discharge of a Mortgage

(1) Any person entitled to the discharge of a mortgage made to or vested in the Accountant may leave with the Accountant the required discharge with a request that it be executed.

(2) The Accountant shall satisfy himself that the money secured by the mortgage has been paid in full and that the proposed discharge is in proper form whereupon the discharge shall be executed by him.

(3) After executing the discharge, the Accountant shall deliver up all deeds and documents relating to the mortgage in his possession, in return for a receipt therefor, and assign any policy of insurance held by him as collateral security for the mortgage to the person entitled to the discharge or as he by writing directs.

75.04 Stop Order

(1) Any person claiming to be interested in, or to have a lien or charge upon, or an assignment of any money or securities in court, or invested in the name of the Accountant or any portion thereof or claiming to have the same applied towards the satisfaction of any judgment or execution against the person to whose credit such moneys or securities stand, or for whose benefit the same are held by the Accountant may, upon filing an affidavit verifying his claim, apply to the court without notice for a Stop Order (Form 75A) directing that such money or securities shall not be paid out or dealt with, except upon notice to the applicant.

(2) Any person who has obtained an order under paragraph (1), may apply to the court, on notice to all interested persons, for an order directing payment out.

APPENDIX OF FORMS
AND
TARIFFS
TO THE
PROPOSED RULES OF CIVIL PROCEDURE

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APPENDIX OF FORMS

FORM 7A

REQUEST FOR APPOINTMENT OF LITIGATION GUARDIAN

(Court, Court File Number, Style of Cause)

REQUEST

TO:

YOU ARE HEREBY REQUESTED to apply to this court within the time limited for delivery of your defence for an order appointing a litigation guardian to act on your behalf in this proceeding.

DATED at, this day of, 19 ..

Name of solicitor for plaintiff (or applicant) :

Business address:

or, where the plaintiff (or applicant) is not represented by a solicitor:

Name of plaintiff (or applicant) :

Address for service within Ontario:

APPENDIX OF FORMS

FORM 7B

ORDER TO CONTINUE
(when minor comes of age)

(Court, Court File Number, Style of Cause)

ORDER TO CONTINUE

Upon the requisition of , and the
minor having come of age on the
. day of , 19 . . , as appears by the affidavit
of , filed;

IT IS ORDERED that this action continue on behalf of *(or
against)* the said minor and that the name and title of his litigation
guardian be omitted from the style of cause in all documents issued
or delivered in this proceeding subsequent to the date of this order.

ISSUED this day of , 19 . .

.
(local registrar)

*Court
Seal*

.
(address of court office)

APPENDIX OF FORMS

FORM 8A

NOTICE TO ALLEGED PARTNER

(Court, Court File Number, Style of Cause)

NOTICE TO ALLEGED PARTNER

TAKE NOTICE that, although you
are not a party to this action, the plaintiff *(or applicant, as the case
may be)* alleges that you are a partner in the defendant *(or respond-
ent, as the case may be)* partnership.

AND TAKE NOTICE that you will be deemed to admit that
you are a partner unless you deliver a Statement of Defence *(or an
affidavit or other documentary evidence, as the case may be)*, deny-
ing that you are a partner.

APPENDIX OF FORMS

FORM 13A

ORDER TO CONTINUE

(upon transmission or transfer of interest)

(Court, Court File Number, Style of Cause)

ORDER TO CONTINUE

Upon the requisition of, and it appearing by the affidavit of, filed, that on the day of, 19 . . ., *(recite the details of the transmission or transfer of interest, as the case may be);*

IT IS ORDERED that this action may be continued with as plaintiff and as defendant and that all documents issued or delivered in this proceeding subsequent to the date of this order shall be so styled.

ISSUED this day of, 19 . .

.....
(local registrar)

*Court
Seal*

.....
(address of court office)

APPENDIX OF FORMS

FORM 16A

STATEMENT OF CLAIM

*For the Statement of Claim in a mortgage action
see the alternative Statement of Claim in this Form*

In the Supreme Court of Ontario

Court File No.

Between:

A.B.,

Plaintiff

*Court
Seal*

and

C.D.,

Defendant

STATEMENT OF CLAIM

NOTICE to the above-named defendant:

TAKE NOTICE that legal proceedings have been commenced against you by the issuing of this Statement of Claim;

AND TAKE NOTICE that if you wish to defend these proceedings, either you or an Ontario lawyer acting on your behalf shall prepare your Statement of Defence (in the form prescribed by the Rules of this Court) and serve it on the plaintiff or his lawyer and, with proof of such service, file it in this Court Office,

- (a) where you are served in Ontario, WITHIN 20 DAYS after service on you of this Statement of Claim; or
- (b) where you are served out of Ontario but elsewhere in Canada or in one of the United States of America, WITHIN 40 DAYS after such service on you; or
- (c) where you are served anywhere else in the world, WITHIN 60 DAYS after such service;

AND TAKE NOTICE that if you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Appendix of Forms

Form 16A

Where the claim is to recover a debt or liquidated demand in money, with or without interest, insert the following notice:

AND TAKE NOTICE that if you pay to the plaintiff or his solicitor the amount of his claim, together with the sum of \$150 (or, in a county court action: \$100) for his costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by , Local Registrar of the Court at , on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

CLAIM

The plaintiff claims:

..... (state here the precise relief claimed)

Then set out in separate, consecutively-numbered paragraphs the following:

1. *The capacity of all persons who are parties to the proceeding.*
2. *The place of residence and the occupation of the plaintiff.*
3. *Where the Statement of Claim is to be served out of Ontario without leave, the facts and the specific provisions of Rule 19 relied upon in support of such service.*

Appendix of Forms

Form 16A

The plaintiff proposes that this action be tried at

DATED at, this day of, 19 ..

Name of solicitor for the plaintiff:

Business address:

or, where the plaintiff is not represented by a solicitor:

Name of plaintiff:

Address for service within Ontario:

STATEMENT OF CLAIM
(in a mortgage action)

In the Supreme Court of Ontario

Court File No.

Between:

A.B.,

Plaintiff

*Court
Seal*

and

C.D.,

Defendant

STATEMENT OF CLAIM

NOTICE to the above named defendant:

TAKE NOTICE that legal proceedings have been commenced against you by the issuing of this Statement of Claim;

AND TAKE NOTICE that if you wish to defend these proceedings, either you or an Ontario lawyer acting on your behalf shall prepare your Statement of Defence (in the form prescribed by the Rules of this Court) and serve it on the plaintiff or his lawyer and, with proof of such service, file it in this Court Office,

- (a) where you are served in Ontario, WITHIN 20 DAYS after service on you of this Statement of Claim; or
- (b) where you are served out of Ontario but elsewhere in WITHIN 40 DAYS after such service on you; or
- (c) where you are served anywhere else in the world, WITHIN 60 DAYS after such service.

AND TAKE NOTICE that if you pay to the plaintiff or his solicitor the amount of his claim, together with the sum of \$150. (*or in a County Court action: \$100.*) for his costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

AND TAKE NOTICE that whether or not you deliver a Statement of Defence as aforesaid, you may request the right to redeem the mortgaged property by serving on the plaintiff or his lawyer and, with proof of such service, filing in this Court Office within the time limited for delivery of your Statement of Defence, a Request to Redeem (in the form prescribed by the Rules of this Court) in which case you will be entitled to seven days notice of the taking of the account of the amount due to the plaintiff, and to three months notice from the date of the taking of the account within which to redeem the mortgaged property.

NOTE: Where the defendant filing such Request is a subsequent encumbrancer, the Request shall contain particulars of his claim verified by an affidavit, and he shall only be entitled to redeem if his claim is not disputed or, if disputed, is proved on a reference to the Master.

AND TAKE NOTICE that if you do not deliver a Statement of Defence as aforesaid, you may request a sale of the mortgaged property by serving on the plaintiff or his lawyer and, with proof of such service, filing in this Court Office within the time limited for delivery of your Statement of Defence, a Request for Sale (in the form prescribed by the Rules of Court) in which case the plaintiff is entitled to obtain from the court a Judgment for Sale.

NOTE: Where the defendant filing such Request is a subsequent encumbrancer, the Request shall contain particulars of his claim verified by an affidavit, and shall be accompanied by a receipt evidencing the fact that the sum of \$250. has been paid into court as security for the costs of the plaintiff and of any other party having carriage of the sale.

AND TAKE NOTICE that if you fail to do any of the above, you may be deemed to have admitted any claim made against you and, without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

CLAIM

- 1. The plaintiff claims:
 - (a) Payment of the sum of \$, together with interest thereon and the costs of this action, and in default thereof that the equity of redemption in the lands secured by the mortgage hereinafter mentioned be foreclosed (*or*, and in default thereof that the mortgaged property hereinafter mentioned may be sold and the proceeds of the sale applied in or towards payment of the said mortgage debt and costs, and that the defendant may be ordered to pay the balance of the said mortgage debt and costs after deducting the amount realized by such sale); and
 - (b) Possession of the mortgaged premises.
- 2. The plaintiff's claim is on a mortgage dated the day of , 19 .. , made between and , and registered (*give particulars of registration and of any assignment of the mortgage*) under which the defendant (*or as the case may be*) mortgaged the lands hereinafter described for a term of years, securing the sum of \$ and interest thereon at the rate of % per annum, and which mortgage provided for payment of principal and interest as follows: (*set out terms of payment*).

- 3. The plaintiff alleges that default in payment of principal and interest (*or as the case may be*) occurred on the day of , 19.. , and still continues.

- 4. The plaintiff alleges that there is now due for principal money the sum of \$ (*if so, add: and for taxes paid or premiums of insurance paid or other matters*) the sum of \$. and for interest the sum of \$. and that you are liable to be charged with these sums and with subsequent interest at the rate of % per annum.

- 5. The following is a description of the mortgaged premises: (*set out description sufficient for registration*).

- 6. (*Where one or more subsequent encumbrancers are defendants in the action, add:*) The plaintiff states that the defendant has been made a party to this action because it would appear that he has some lien, charge or encumbrance upon the mortgaged premises.

The plaintiff proposes that this action be tried at

DATED at , this day of , 19..

Name of Solicitor for the plaintiff:

Business address:

or, where the plaintiff is not represented by a solicitor:

Name of plaintiff:

Address for service within Ontario:

Where the Statement of Claim is to be served out of Ontario without leave, the facts and the specific provisions of Rule 19 relied upon in support of such service must be applied.

APPENDIX OF FORMS

FORM 16B

NOTICE OF ACTION

In the Supreme Court of Ontario

Court File No.

Between:

A.B.

Plaintiff

*Court
Seal*

and

C.D.

Defendant

NOTICE OF ACTION

NOTICE to the above-named defendant:

TAKE NOTICE that legal proceedings have been commenced against you by the issuing of this Notice of Action;

AND TAKE NOTICE that if you wish to defend these proceedings, either you or an Ontario lawyer acting on your behalf shall prepare your Statement of Defence (in the form prescribed by the Rules of this Court) and serve it on the plaintiff or his lawyer and, with proof of such service, file it in this Court Office,

- (a) where you are served in Ontario, WITHIN 20 DAYS after service on you of this Notice of Action and the Statement of Claim served herewith; or
- (b) where you are served out of Ontario but elsewhere in Canada or in one of the United States of America, WITHIN 40 DAYS after such service on you; or
- (c) where you are served anywhere else in the world, WITHIN 60 DAYS after such service;

AND TAKE NOTICE that if you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

Appendix of Forms

Form 16B

Where the claim is to recover a debt or liquidated demand in money, with or without interest, insert the following notice:

AND TAKE NOTICE that if you pay to the plaintiff or his solicitor the amount of his claim, together with the sum of \$150. (or, in a county court action: \$100.) for his costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the Court to have the action dismissed.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by , Local Registrar of the Court at on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

CLAIM

The plaintiff's claim is (set out a short statement of the nature of the plaintiff's claim)

Conclude the Form as to name and address as in Form 16A.

APPENDIX OF FORMS

FORM 16C

STATEMENT OF CLAIM

(where action was commenced by Notice of Action)

In the Supreme Court of Ontario

Court File No.

Between:

A.B.,

Plaintiff

and

C.D.

Defendant

STATEMENT OF CLAIM

(Notice of Action issued on , 19 . .)

The plaintiff claims:

. (state here the precise relief claimed)

Then set out in separate, consecutively-numbered paragraphs the following:

1. *The capacity of all persons who are parties to the proceeding.*
2. *The place of residence and the occupation of the plaintiff.*
3. *Where the Statement of Claim is to be served out of Ontario without leave, the facts upon which it is alleged that such service is permitted and the provisions of Rule 19 relied upon.*
4. *Each allegation of a material fact relied upon to substantiate the claim.*

The plaintiff proposes that this action be tried at

DATED at , this day of , 19 . .

Conclude the Form as to name and address as in Form 16A.

APPENDIX OF FORMS

FORM 16D

NOTICE OF APPLICATION

In the Supreme Court of Ontario

Court File No

Court

(Style of Cause)

Seal

NOTICE OF APPLICATION

TAKE NOTICE that the applicant has commenced a proceeding by the issuing of this Notice of Application.

AND TAKE NOTICE that the applicant will make an application before the Court at *(specific location)* on day the day of , 19 . . at *(a.m. or p.m.)* for an order as set out hereunder;

AND TAKE NOTICE that if you wish to oppose this application you shall appear on the hearing of the application at the place, date and time stated, either in person or by an Ontario lawyer acting on your behalf;

AND TAKE NOTICE that if you intend to appear on the hearing of the application and wish to present to the Court at that time affidavit or other documentary evidence to support your position, you shall serve a copy of such evidence on the applicant or his solicitor and, with proof of such service, file it in this court office prior to the hearing of the application.

AND TAKE NOTICE that if you fail to appear on the hearing of the application AN ORDER MAY BE MADE AGAINST YOU IN YOUR ABSENCE.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by , Local Registrar of the court at , on the day of , 19 . .

.
(local registrar)

.
(address of court office)

APPLICATION

On the hearing of this application, the applicant intends to apply for an order that (*state precisely the relief being sought*)

Then set out in separate, consecutively-numbered paragraphs, the following:

- 1. *The capacity of all persons who are parties to the proceeding.*
- 2. *The place of residence and the occupation of the applicant.*
- 3. *Where the Notice of Application is to be served out of Ontario without leave, the facts and the specific provisions of Rule 19 relied upon in support of such service.*
- 4. *A list of the affidavits or other documentary evidence intended to be used on the hearing of the application.*

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 18A

ACKNOWLEDGEMENT OF RECEIPT CARD

(Court, Court File Number, Abbreviated Style of Cause)

To:

You are served by mail with the documents enclosed with this card pursuant to the Ontario Rules of Civil Procedure.

You MUST complete and sign the acknowledgement below and mail this card within 3 days of the date you received it or you may have to pay the costs of the Sheriff or some other person serving you personally.

ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge that on the day of....., 19.. , I received the following documents: *(to be completed in advance by the sender of the documents)*

(a)

(b)

etc.

.....
(signature of person served)

NOTE: On the reverse side of the card, the sender of the documents shall print his name and full mailing address, and shall affix the required postage.

APPENDIX OF FORMS

FORM 18B

AFFIDAVIT OF SERVICE

(Court, Court File Number, Style of Cause)

AFFIDAVIT OF SERVICE

I, *(full name)*, of the of
in the of, *(description)*
MAKE OATH AND SAY AS FOLLOWS:

1. On day, the day of, 19 .. ,
I served the defendant *(or as the case may be)* with
by leaving a true copy of the same with him at
..... *(address where service was made)*

2. I was able to identify the person served by means of the fact
that
.....

*or, where service was made on an individual by leaving a copy with
an adult person:*

1. On day, the day of, 19 .. ,
I served the defendant *(or as the case may be)* with
by leaving a true copy of the same with
who appeared to be an adult and a member of the household in
which the defendant *(or as the case may be)* is residing at
(address where service was made), and by mailing
a true copy of the same by prepaid first class mail to the defendant
(or as the case may be) on the same date and to the same address.

2. Prior to such service, I made an unsuccessful attempt to
personally serve the defendant *(or as the case may be)* at the same
address on the day of, 19 .. , *(or, where more
than one attempt has been made, add:)* and again on the day
of, 19 ..

Appendix of Forms

Form 18B

or, where service was made by prepaid first class mail upon a party:

1. On day, the ... day of , 19 .. ,
I served the defendant (*or as the case may be*) with
..... by mailing by prepaid first class mail a true copy of the
same addressed to him at (*full mailing address*)
being the last address for service furnished by him (*or, where no such
address has been furnished: being his last known address*).

*or, where service was made by prepaid first class mail upon the
solicitor for a party:*

1. On day, the day of , 19 .. ,
I served the defendant (*or as the case may be*) with
by mailing by prepaid first class mail a true copy of the same ad-
dressed to .. , the solicitor for the said defendant (*or as the case may
be*) at (*full mailing address*)

or, where service was made by certified mail upon a party:

1. The defendant (*or as the case may be*) was served with
..... by certified mail.

2. Attached hereto and marked Exhibit "A" to this my affi-
davit is an Acknowledgment of Receipt Card (*or, a Post Office
Receipt as the case may be*) bearing a signature which appears to be
the signature of the said defendant (*or as the case may be*) and the
same was received by me (*or, by my office, as the case may be*) on
..... day, the day of , 19 ..

SWORN, *etc.*

APPENDIX OF FORMS

FORM 18C

CERTIFICATE OF SERVICE BY SHERIFF

I, (*full name*), Sheriff (*or Sheriff's Officer as the case may be*) for the County of, certify that on the day of, 19 .., at (*a.m. or p.m.*) I left a copy of this document with (*name of person served*) at (*place of service*)

I was able to identify the person served by means of the fact that

DATED at, this day of, 19 ..

.....
(*signature of sheriff or sheriff's officer serving the document*)

Appendix of Forms

Form 18B

or, where service was made by prepaid first class mail upon a party:

1. On day, the ... day of , 19... ,
I served the defendant (*or as the case may be*) with
..... by mailing by prepaid first class mail a true copy of the
same addressed to him at (*full mailing address*)
being the last address for service furnished by him (*or, where no such
address has been furnished: being his last known address*).

*or, where service was made by prepaid first class mail upon the
solicitor for a party:*

1. On day, the day of , 19... ,
I served the defendant (*or as the case may be*) with
by mailing by prepaid first class mail a true copy of the same ad-
dressed to . . . , the solicitor for the said defendant (*or as the case may
be*) at (*full mailing address*)

or, where service was made by certified mail upon a party:

1. The defendant (*or as the case may be*) was served with
..... by certified mail.

2. Attached hereto and marked Exhibit "A" to this my affi-
davit is an Acknowledgment of Receipt Card (*or, a Post Office
Receipt as the case may be*) bearing a signature which appears to be
the signature of the said defendant (*or as the case may be*) and the
same was received by me (*or, by my office, as the case may be*) on
..... day, the day of , 19...

SWORN, *etc.*

APPENDIX OF FORMS

FORM 18C

CERTIFICATE OF SERVICE BY SHERIFF

I, (*full name*), Sheriff (*or Sheriff's Officer as the case may be*) for the County of, certify that on the day of, 19 .., at (*a.m. or p.m.*) I left a copy of this document with (*name of person served*) at (*place of service*)

I was able to identify the person served by means of the fact that

DATED at, this day of, 19 ..

.....
(*signature of sheriff or sheriff's officer serving the document*)

APPENDIX OF FORMS

FORM 20A

STATEMENT OF DEFENCE

(Court, Court File Number, Style of Cause)

STATEMENT OF DEFENCE

1. The defendant admits the allegations contained in paragraphs numbered of the Statement of Claim.
2. The defendant specifically denies the allegations contained in paragraphs numbered of the Statement of Claim.
3. The defendant pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Statement of Claim.

Set out in separate, consecutively-numbered paragraphs, each allegation of a material fact relied upon by way of defence.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 20 B

NOTICE OF INTENT TO DEFEND

(Court, Court File Number, Style of Cause)

NOTICE OF INTENT TO DEFEND

TAKE NOTICE that the defendant intends to defend this action.

DATED at , this day of , 19 . .

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 21A

JUDGMENT

(to recover a debt or liquidated demand)

In the Supreme Court of Ontario

Court File No

Court

Seal

(Style of Cause)

JUDGMENT

..... day, the day of 19..

UPON reading the Statement of Claim in this action, and proof of service of the same upon the defendant having been filed, and no Statement of Defence having been filed;

1. IT IS ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$ and the further sum of \$ for the costs of this action.

.....
(local registrar)

.....
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 21B

JUDGMENT

(to recover possession of land)

In the Supreme Court of Ontario

Court File No

Court
Seal

(Style of Cause)

JUDGMENT

. day, the day of , 19 . .

UPON reading the Statement of Claim in this action, and proof of service of the same upon the defendant having been filed, and no Statement of Defence having been filed;

1. IT IS ORDERED AND ADJUDGED that the plaintiff recover possession of the following land:
.
(or, where the description of the land is so lengthy that it is not practicable to insert it here, substitute:) the land described in the Statement of Claim.

2. AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$. for the costs of this action.

.
(local registrar)

.
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 21C

JUDGMENT
(to recover chattels)

In the Supreme Court of Ontario

Court File No

Court
Seal

(Style of Cause)

JUDGMENT

. day, the day of , 19 ..

UPON reading the Statement of Claim in this action, and proof of service of the same upon the defendant having been filed, and no Statement of Defence having been filed;

1. IT IS ORDERED AND ADJUDGED that the defendant forthwith deliver to the plaintiff the following chattels:

.
.
.

(or, where the number of chattels is so great or their descriptions so involved that it is not practicable to list them, substitute:) the chattels described in the Statement of Claim.

2. AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$ for the costs of this action.

.
(local registrar)

.
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 24A

STATED CASE

(Court, Court File Number, Style of Cause)

STATED CASE

The following case is stated for the opinion of the court:

Recite the material facts of the case, agreed upon between the parties, necessary to enable the Court to determine the question stated.

The question for the opinion of the Court is:

1. Whether, etc.

Where such be the case, add:

The parties have agreed upon the specific relief to be granted on the determination of the question stated and the specific relief agreed upon is as follows:

.....
.....

DATED at , this day of , 19 ..

.....
*(signature of plaintiff
or his solicitor)*

.....
*(signature of defendant
or his solicitor)*

APPENDIX OF FORMS

FORM 25A

NOTICE OF DISCONTINUANCE

(Court, Court File Number, Style of Cause)

NOTICE OF DISCONTINUANCE

TAKE NOTICE that the plaintiff wholly discontinues this action.

or, where applicable:

TAKE NOTICE that the plaintiff discontinues that part of his action relating to

DATED at, this day of 19 ..

Conclude the Form as to name and address as in Form 16A.

APPENDIX OF FORMS

FORM 25B

NOTICE OF WITHDRAWAL

(Court, Court File Number, Style of Cause)

NOTICE OF WITHDRAWAL

TAKE NOTICE that the defendant hereby withdraws his Statement of Defence.

or, where only part of the Statement of Defence is withdrawn:

TAKE NOTICE that the defendant hereby withdraws that part of his Statement of Defence relating to

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 25C

NOTICE OF ELECTION
(to proceed with counterclaim)

(Court, Court File Number, Style of Cause)

NOTICE OF ELECTION

TAKE NOTICE that the defendant elects to proceed with his counterclaim in this action.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 26A

NOTICE OF STATUS HEARING

(Court, Court File Number, Style of Cause)

NOTICE OF STATUS HEARING

TO: *(the solicitors of record)*

TAKE NOTICE that more than one year has elapsed since a Statement of Defence in this proceeding was filed in my office and that the action has not yet been set down for trial.

AND TAKE NOTICE that on day, the day of , 19 .. , at ... (a.m. or p.m.) ... at *(specific location of court)* a hearing will be held to determine the status of this action and that you are required to attend the hearing.

AND FURTHER TAKE NOTICE that if your client does not attend the hearing with you, you will be required to file proof of service upon him of a copy of this Notice.

DATED at , this day of , 19 ..

.....
(local registrar)

.....
(address of court office)

APPENDIX OF FORMS

FORM 27 A

REPLY

(Court, Court File Number, Style of Cause)

REPLY

1. The plaintiff admits the allegations contained in paragraphs numbered of the Statement of Defence.
2. The plaintiff specifically denies the allegations contained in paragraphs numbered of the Statement of Defence.
3. The plaintiff pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Statement of Defence.

Set out in separate, consecutively-numbered paragraphs, each allegation of a material fact relied upon by way of reply to the Statement of Defence.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 27B

COUNTERCLAIM

Where the Counterclaim is against the plaintiff only, it shall follow immediately after the last-numbered paragraph of the Statement of Defence.

COUNTERCLAIM

The plaintiff by counterclaim claims:

..... *(state here the precise relief claimed)*

Then set out in consecutively-numbered paragraphs (following in sequence the last-numbered paragraph of the Statement of Defence) each allegation of a material fact relied upon to substantiate the counterclaim.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

Where the Counterclaim is against the plaintiff and another person, a further style of cause shall be added to that appearing at the beginning of the Statement of Defence, as follows:

Appendix of Forms

Form 27B

And Between:

C.D.,

Plaintiff by
Counterclaim

Court
Seal

and

A.B. and X.Y.,

Defendants by
Counterclaim

and the following shall appear immediately after the last-numbered paragraph of the Statement of Defence:

COUNTERCLAIM

Notice to X.Y.

TAKE NOTICE that the defendant in this action has filed this Counterclaim against the plaintiff and you;

AND TAKE NOTICE that if you wish to defend this Counterclaim, either you or an Ontario lawyer acting on your behalf shall prepare your Defence to Counterclaim (in the form prescribed by the Rules of this Court) and serve it on the plaintiff by counterclaim, or his lawyer and, with proof of such service, file it in this Court Office WITHIN 20 DAYS after service on you of the Statement of Claim and this Statement of Defence and Counterclaim;

AND TAKE NOTICE that if you fail to do so, you may be deemed to have admitted the Counterclaim of the plaintiff by counterclaim and, without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by , Local Registrar of the Court at on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

CLAIM

The plaintiff by counterclaim claims:

..... (*state here the precise relief claimed*)

Then set out in separate, consecutively-numbered paragraphs (following in sequence the last-numbered paragraph of the Statement of Defence) each allegation of a material fact relied upon to substantiate the counterclaim.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

Where the counterclaim is to be served out of Ontario without leave, the facts and the specific provisions of Rule 19 relied upon in support of such service must be applied.

APPENDIX OF FORMS

FORM 27C

DEFENCE TO COUNTERCLAIM

*(Court, Court File Number and same
Style of Cause as in the Statement of Defence
and Counterclaim)*

DEFENCE TO COUNTERCLAIM

1. The defendant by counterclaim admits the allegations contained in paragraphs numbered of the Counterclaim.
2. The defendant by counterclaim specifically denies the allegations contained in paragraphs numbered of the Counterclaim.
3. The defendant by counterclaim pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Counterclaim.

Set out in separate, consecutively-numbered paragraphs, each allegation of a material fact relied upon by way of defence to the Counterclaim.

DATED at , this day of , 19 . .

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 27 D

REPLY TO DEFENCE TO COUNTERCLAIM

*(Court, Court File Number and same Style
of Cause as in the Defence and Counterclaim)*

REPLY TO DEFENCE TO COUNTERCLAIM

1. The plaintiff by counterclaim admits the allegations contained in paragraphs numbered of the Defence to Counterclaim.
2. The plaintiff by counterclaim specifically denies the allegations contained in paragraphs numbered of the Defence to Counterclaim.
3. The plaintiff by counterclaim pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Defence to Counterclaim.

Set out in separate, consecutively-numbered paragraphs each allegation of a material fact relied upon by way of reply to the Defence to Counterclaim.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 27E

CROSS-CLAIM

The Cross-Claim shall follow immediately after the last-numbered paragraph of the Statement of Defence

CROSS-CLAIM

The defendant claims as against the defendant
.....

..... (state here the relief claimed)

Then set out in separate, consecutively-numbered paragraphs (following in sequence the last-numbered paragraph of the Statement of Defence) each allegation of a material fact relied upon to substantiate the cross-claim.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

Where the cross-claim is to be served out of Ontario without leave, the facts and the specific provisions of Rule 19 relied upon in support of such service must be applied.

APPENDIX OF FORMS

FORM 27 F

DEFENCE TO CROSS-CLAIM

(Court, Court File Number, Style of Cause)

DEFENCE TO CROSS-CLAIM

1. The defendant admits the allegations contained in paragraphs numbered of the Cross-Claim.
2. The defendant specifically denies the allegations contained in paragraphs numbered of the Cross-Claim.
3. The defendant pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Cross-Claim.

Set out in separate, consecutively-numbered paragraphs, each allegation of a material fact relied upon by way of defence to the Cross-Claim.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 27 G

REPLY TO DEFENCE TO CROSS-CLAIM

(Court, Court File Number, Style of Cause)

REPLY TO DEFENCE TO CROSS-CLAIM

1. The defendant admits the allegations contained in paragraphs numbered of the Defence to Cross-Claim.
2. The defendant specifically denies the allegations contained in paragraphs numbered of the Defence to Cross-Claim.
3. The defendant pleads that he has no knowledge of the allegations contained in paragraphs numbered
..... of the Defence to Cross-Claim.

Set out in separate, consecutively-numbered paragraphs each allegation of a material fact relied upon by way of reply to the Defence to Cross-Claim.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 27H

THIRD PARTY CLAIM

In the Supreme Court of Ontario

Court File No.

Between:

A.B.,

Plaintiff

and

Court

C.D.,

Seal

Defendant

and

E.F.,

Third Party

THIRD PARTY CLAIM

NOTICE TO *E.F.*

TAKE NOTICE that the plaintiff has commenced an action for the relief set out in the Statement of Claim served herewith;

AND TAKE NOTICE that the defendant disputes the plaintiff's claim on the grounds set out in his Statement of Defence served herewith, and claims to be entitled to relief against you on the grounds set out in this Third Party Claim filed today in this Court Office;

AND TAKE NOTICE that if you wish to dispute your liability to the defendant, either you or an Ontario lawyer acting on your behalf shall prepare your Third Party Defence (in the form prescribed by the Rules of this Court) and serve it on the defendant or his lawyer and, with proof of such service, file it in this Court Office WITHIN 20 DAYS after service on you of this Third Party Claim, the Statement of Claim and the Statement of Defence of the defendant.

Appendix of Forms

Form 27H

AND TAKE NOTICE that if you wish to defend the plaintiff's claim against the defendant, as well as your liability to such defendant, your Third Party Defence shall include such defence and, within the same period, you shall serve it on the plaintiff or his lawyer and, with proof of such service, file it in this court office;

AND TAKE NOTICE that if you fail to comply with the foregoing notices, you may be deemed to admit the validity of any judgment obtained against the defendant and your own liability to the defendant to the extent claimed in this Statement of Third Party Claim and, without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by Local Registrar of the said court at on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

CLAIM

The defendant claims against the third party:
..... (state here the precise relief claimed)

Then set out in separate, consecutively numbered paragraphs each allegation of a material fact relied upon to substantiate the third party claim.

DATED at this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

Where the Third Party Claim is to be served out of Ontario without leave, the facts and the specific provisions of Rule 19 relied upon in support of such service must be pleaded.

APPENDIX OF FORMS

FORM 27I

THIRD PARTY DEFENCE

*(Court, Court File Number and the same
Style of Cause as in the Third Party Claim)*

THIRD PARTY DEFENCE

1. The third party admits the allegations contained in paragraphs numbered of the Third Party Claim.
2. The third party specifically denies the allegations contained in paragraphs numbered of the Third Party Claim.
3. The third party pleads that he has no knowledge of the allegations contained in paragraphs numbered of the Third Party Claim.

Set out in separate, consecutively-numbered paragraphs each allegation of a material fact relied upon by way of defence to the Third Party Claim and, where applicable, each allegation of a material fact relied upon by way of defence to the Statement of Claim in the main action.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 27J

REPLY TO THIRD PARTY DEFENCE

*(Court, Court File Number and the same
Style of Cause as in the Third Party Claim)*

REPLY TO THIRD PARTY DEFENCE

1. The defendant *(or plaintiff as the case may be)* admits the allegations contained in paragraphs numbered of the Third Party Defence.

2. The defendant *(or plaintiff as the case may be)* specifically denies the allegations contained in paragraphs numbered of the Third Party Defence.

3. The defendant *(or plaintiff as the case may be)* pleads that he has no knowledge of the allegations contained in paragraphs numbered of the Third Party Defence.

Set out in separate, consecutively-numbered paragraphs each allegation of a material fact relied upon by way of reply to the Third Party Defence.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 31A

AFFIDAVIT OF DOCUMENTS

(Court, Court File Number, Style of Cause)

AFFIDAVIT OF DOCUMENTS

I, *(full name)*, of the
of, in the of,
..... *(description)*

MAKE OATH AND SAY AS FOLLOWS:

(a) I have in my possession, custody or control . *(number)* .
documents which are relevant to the matters in question in this
action.

(b) Of those documents referred to in paragraph (a), I do
not object to producing the following:

1.
2.
3. *etc.*

(c) Of those documents referred to in paragraph (a), I do
object to producing the following:

1.
2.
3. *etc.*

and my reasons for such objection are as follows:

.....
.....

Appendix of Forms

Form 31A

(d) I once had in my possession, custody or control . . . (number) . . . documents which are relevant to the matters in question in this action. The documents which are no longer in my possession, custody or control, and cannot be produced by me are the following:

- 1.
- 2.
- 3. (etc.)

I ceased to have possession, custody or control of such documents on or about the day of , 19 . . . , by reason of
Those documents are to the best of my knowledge, information and belief presently located at
.

(e) I have never had in my possession, custody or control any document relevant to the matters in question in this action other than those listed in paragraphs (b), (c) and (d) above.

SWORN, etc.

The following certificate shall be endorsed upon the affidavit at its foot:

CERTIFICATE OF SOLICITOR

I HEREBY CERTIFY that I have explained to the deponent the necessity of making a full and fair disclosure of all relevant documents. I have no knowledge of any document not disclosed in the foregoing affidavit which should have been disclosed.

.....
(signature of solicitor)

APPENDIX OF FORMS

FORM 31B

REQUEST TO INSPECT DOCUMENTS

(Court, Court File Number, Style of Cause)

REQUEST TO INSPECT DOCUMENTS

TAKE NOTICE that you are requested to forthwith produce for inspection the following documents which have been referred to in a pleading delivered by you (*or*, in an affidavit filed by you, *as the case may be*):

1.

2.

3.

etc.

DATED at..... , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 33A

NOTICE OF APPOINTMENT
(for an examination)

(Court, Court File Number, Style of Cause)

NOTICE OF APPOINTMENT

TO:

TAKE NOTICE that I have appointed day, the
..... day of, 19 .., at ... *(a.m. or p.m.)* ...
at my office located at *(specific location)*
for your examination *(state purpose of examination)*
in this proceeding.

AND TAKE NOTICE that you are required to bring with
you and produce at the examination the following documents:

.....
.....

DATED at, this day of, 19 ..

.....
Official Examiner

*Note: Where the person to be examined is not a party to the pro-
ceeding, a Summons to Witness (Form 33B) is to be served
in lieu of this Form.*

APPENDIX OF FORMS

FORM 33B

SUMMONS TO WITNESS

(for an examination)

(Court, Court File Number, Style of Cause)

SUMMONS TO WITNESS

TO:

TAKE NOTICE that you are required to attend before at his office located at (*specific location*) on day, the day of , 19 . . . , at . . . (*a.m. or p.m.*) . . . for your examination . . . (*state purpose of examination*) . . . , and to attend from day to day thereafter until your examination is completed, and also to bring with you and produce at the examination the following documents:

.....

AND TAKE NOTICE that the conduct money given to you with this Summons is calculated as follows:

- | | | | |
|-----|-------------------------------------|-----------|--------------|
| (a) | attendance allowance @ \$ | per day - | \$ |
| (b) | mileage allowance - | | \$ |
| (c) | overnight accommodation allowance - | | \$ |

The above fees are proper conduct money for day (s) attendance and, if further attendance is required, you will be entitled to additional fees.

AND TAKE NOTICE that if you fail to attend or remain in attendance as required by this Summons, an order may be issued compelling your attendance at your own expense.

Appendix of Forms

Form 33B

This Summons to Witness is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at, on the day of, 19 ..

.....
(local registrar)

Court
Seal

.....
(address of court office)

Note: The party (*or* solicitor) causing this Summons to Witness to be served on you, and to whom any inquiries are to be directed, is:

.....
(name)

.....
(address)

.....
(telephone number)

APPENDIX OF FORMS

FORM 37A

NOTICE OF MOTION

(Court, Court File Number, Style of Cause)

NOTICE OF MOTION

TO:

TAKE NOTICE that the plaintiff *(or as may be)* will apply to the Court at *(specific location)* on the day of, 19 .., at *(a.m. or p.m.)* for an order that *(state precisely the relief sought, any irregularity complained of or any objection intended to be relied on, specifying with particularity the grounds intended to be argued, including reference to any statutory provision or rule intended to be invoked);*

AND TAKE NOTICE that upon the hearing of the motion will be read *(list the affidavits or other documentary evidence to be used)*.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 38A

ORDER OF TRANSFER

(Court, Court File Number, Style of Cause)

ORDER OF TRANSFER

Upon the requisition of the respondent
on this application returnable before His Honour Judge,
local judge of the Supreme Court at :

IT IS ORDERED that this application be transferred for
hearing before a judge of the Supreme Court.

ISSUED this day of , 19 ..

.....
(local registrar)

*Court
Seal*

.....
(address of court office)

APPENDIX OF FORMS

FORM 43A

NOTICE OF CLAIM
(to execution creditor)

*(Court, Court File Number, Style of Cause,
as in the Execution filed with the Sheriff)*

NOTICE OF CLAIM

TO:

TAKE NOTICE that I have taken (*or intend to take as the case may be*) into my possession and control the following property (*or the proceeds from a disposition of the following property as the case may be*):

.....
.....

AND TAKE NOTICE that I have received notice from of his claim to the said property, the nature and particulars of which are as follows:

AND TAKE NOTICE that within 7 days after you receive this Notice you are required to give notice in writing to me as to whether you admit or dispute such claim.

DATED at, this day of, 19..

.....
(signature of sheriff)

.....
(address of sheriff's office)

FORM 44A

BOND

(security for property recovered)

(Court, Court File Number, Style of Cause)

TAKE NOTICE that we, (plaintiff or defendant,
as the case may be) and

DATED at , this day of , 19 ..

Witnessed by) plaintiff
) (or defendant as the case may be)
)
)
 as to signature of the plaintiff) surety company
 (or defendant as the case may be)

Corporate

APPENDIX OF FORMS

FORM 46A

JURY NOTICE

(Court, Court File Number, Style of Cause)

JURY NOTICE

TAKE NOTICE that the plaintiff *(or as may be)* requires that this action be tried *(or that the damages in this action be assessed as may be)* by a jury.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 47A

NOTICE OF TRIAL

(Court, Court File Number, Style of Cause)

NOTICE OF TRIAL

TAKE NOTICE that forthwith after the service of this Notice upon you, this action will be set down for trial at the sittings of this court at

AND TAKE NOTICE that you may, from time to time, inquire at the office of the local registrar of the court at that place as to the approximate date of trial;

AND TAKE NOTICE that if this action remains untried at the conclusion of a sittings, it may be tried at a subsequent sittings without further notice to you.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 47B

REQUEST TO FIX DATE FOR TRIAL

(Court, Court File Number, Style of Cause)

NOTICE OF REQUEST

TAKE NOTICE that the plaintiff *(or as may be)* hereby applies to the Honourable the Chief Justice of the High Court for an order fixing a date for the trial of this action.

This action was set down on the day of 19 . . ., for trial at with a jury *(or without a jury as the case may be)*.

The plaintiff *(or as may be)* submits that:

1. The most convenient dates for the trial, in order of preference, are:
 - (a)
 - (b)
 - (c)
2. The trial will not last longer than days.
3. The plaintiff *(or as may be)* will call approximately witnesses, including experts, and will file approximately exhibits.

The reasons for making this request are as follows:

.
.

DATED at, this day of, 19 . .

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

Note: *This Form is to be served on all parties who have not been noted in default.*

APPENDIX OF FORMS

FORM 47C

RESPONSE TO A REQUEST
TO FIX DATE FOR TRIAL

(Court, Court File Number, Style of Cause)

RESPONSE

In response to the request of the plaintiff *(or as may be)* to have the date for the trial of this action fixed, the defendant *(or as may be)* submits that:

1. The most convenient dates for the trial, in order of preference, are:
 - (a)
 - (b)
 - (c)
2. The trial will not last longer than days.
3. The defendant *(or as may be)* will call approximately witnesses, including experts, and will file approximately exhibits.

The reasons for not joining in the request of the plaintiff *(or as may be)* are as follows:

.....
.....

DATED at, thisday of, 19 ..

.....
Solicitor for responding party

NOTE: *A party who has been noted in default is not entitled to serve and file this Form.*

APPENDIX OF FORMS

FORM 47D

JOINT REQUEST TO FIX DATE FOR TRIAL

(Court, Court File Number, Style of Cause)

JOINT REQUEST

TAKE NOTICE that the parties hereby jointly request the Honourable Chief Justice of the High Court to fix the date for the trial of this action.

This action was set down on the day of , 19 . . for trial at , and a copy of the record is attached hereto.

The parties submit that:

1. The most convenient dates for the trial, in order of preference, are:
 - (a)
 - (b)
 - (c)
2. The trial will not last longer than days.
3. The parties will call approximately witnesses, including experts, and will file approximately exhibits.

The reasons for making this request are as follows:

.....
.....

DATED at , this day of , 19 . .

.....
Solicitor for plaintiff

.....
Solicitor for defendant

NOTE: *This Form is to be used when the request is being made jointly by all parties who have not been noted in default.*

APPENDIX OF FORMS

FORM 48A

NOTICE OF PAYMENT INTO COURT

(Court, Court File Number, Style of Cause)

NOTICE OF PAYMENT INTO COURT

TAKE NOTICE that the defendant has paid into Court the sum of \$ in satisfaction of the following:

(specify the claim or claims in respect of which such payment is made and the amount of such payment in respect of each claim)

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 48B

NOTICE OF REVOCATION
(of payment into court)

(Court, Court File Number, Style of Cause)

NOTICE OF REVOCATION

TAKE NOTICE that the defendant hereby revokes his
payment into Court of the sum of \$.....on the.....day of
....., 19 ..

DATED at , this day of , 19 ..

*Conclude the Form as to name and address (with the appropriate
changes) as in Form 16A.*

APPENDIX OF FORMS

FORM 48C

**NOTICE OF ACCEPTANCE
(of money in court)**

(Court, Court File Number, Style of Cause)

NOTICE OF ACCEPTANCE

TAKE NOTICE that the plaintiff accepts the sum of \$,
paid into court by the defendant, in satisfaction of the claim in res-
pect of which it was paid in.

DATED at , this day of , 19 . .

*Conclude the Form as to name and address (with the appropriate
changes) as in Form 16A.*

APPENDIX OF FORMS

FORM 53A

COMMISSION
(to examine witnesses)

(Court, Court File Number, Style of Cause)

COMMISSION

TO:

TAKE NOTICE that you have been appointed a Commissioner for the purpose of taking evidence in this action now pending in this Court;

AND TAKE NOTICE that you are hereby given full power and authority to administer all necessary oaths and to do all things necessary for the taking of the evidence more particularly mentioned in the order authorizing the issue of this Commission, a copy of which is attached hereto;

AND TAKE NOTICE that forthwith after taking such evidence you shall forward to this Court a transcript of it together with this Commission;

AND TAKE NOTICE that in the execution of this Commission you shall have regard to the terms of the order attached hereto and the instructions contained in this Commission.

THIS COMMISSION is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at, on the day of, 19 ..

.....
(local registrar)

*Court
Seal*

.....
(address of court office)

Issued pursuant to the order of *(name and title of judge)*
dated the day of, 19 ..

INSTRUCTIONS TO COMMISSIONER

1. The Commission shall, insofar as it is possible to do so, be conducted in accordance with the Ontario Rules of Civil Procedure.

2. Before acting on this Commission, you will take the following oath:

I, , do hereby swear that I will, according to the best of my skill and knowledge, truly and faithfully and without partiality to any of the parties to this action, take the evidence of each and every witness produced and examined by virtue of this Commission, and will cause the evidence to be transcribed and forwarded to the Court. So help me God.

Sworn before me at the)
of in the)
of , this day)
of , 19 ..) *(signature of Commissioner)*

.....
*(signature and office of person
before whom oath is taken)*

3. Where you employ a stenographic reporter to record and transcribe the evidence taken before you, you will administer the following oath to him or her:

You swear that you will truly and faithfully record and transcribe all questions put to all witnesses and their answers thereto so far as you are directed to do so by the Commissioner. So help you God.

4. You will administer the following oath to each witness whose evidence is to be taken:

You swear that the evidence to be given by you touching the matters in question between the parties to this action shall be the truth, the whole truth, and nothing but the truth. So help you God.

Appendix of Forms

Form 53A

5. Where a witness does not understand the language or is deaf or mute, the examining party will provide an interpreter through whom the evidence of the witness shall be given. You will administer the following oath to the interpreter:

You swear that you understand the language of the witness and the language in which the examination is to be conducted and that you will truly interpret the oath to the witness and all questions put to the witness and his (or her) answers thereto, to the best of your skill and understanding. So help you God.

6. When the evidence taken before you has been transcribed, you will attach a copy of the transcript to this Commission, complete the Certificate shown hereunder, and mail both to the office of the court where the Commission was issued.

CERTIFICATE OF COMMISSIONER

I, hereby certify that the proper oaths were administered by me to the person recording and transcribing the evidence, to the witness(es) the transcript of whose evidence is attached hereto and to any interpreter called upon by me to interpret any evidence, and that the said evidence was duly and properly taken by me, and that the evidence was duly and correctly transcribed.

.....
(signature of Commissioner)

DATED at , this day of , 19 ..

APPENDIX OF FORMS

FORM 53B

LETTER OF REQUEST
(to foreign court)

(Court, Court File Number, Style of Cause)

TO: *(title and location of foreign court)*

WHEREAS a proceeding is pending in this Court at the
..... of in the Province of Ontario, Canada,
wherein is plaintiff and is defendant;

AND WHEREAS it has been suggested to this Court that
there is a witness residing within your jurisdiction without whose
testimony justice cannot be completely done between the parties to
the said proceeding;

AND WHEREAS a Commission has been issued by this
Court to *(name of commissioner)*
of *(address of commissioner)* providing
for the oral examination of that witness, namely
of *(address of witness)*

YOU ARE THEREFORE REQUESTED that in furtherance
of justice you will by the proper and usual process of your Court
cause the said *(name of witness)* to appear
before the said commissioner and answer under oath or affirmation
the questions that may be put to him *(where such is desired, add:)*
and to bring with him and produce at the examination the following
documents:
.....

AND WHEN YOU REQUEST IT, we shall be ready and
willing to do the same for you in a similar case.

THIS LETTER OF REQUEST is signed and sealed for the
Supreme Court of Ontario by Local Registrar
of the Court at , on the day of , 19 ..

.....
(local registrar)

Court
Seal

.....
(address of court office)

Issued pursuant to the order of (name and title of judge)
dated the day of , 19 ..

APPENDIX OF FORMS

FORM 55A

SUMMONS TO WITNESS
(for a trial)

(Court, Court File Number, Style of Cause)

SUMMONS TO WITNESS

TO:

TAKE NOTICE that you are required to attend the sittings of the Court to be held at (city or town) in the courthouse located at (specific location) , on day, the day of, 19 .., at (a.m. or p.m.) and to attend from day to day thereafter until this action is tried, to give evidence on behalf of and also to bring with you and produce at the trial the following documents:

.....
.....

AND TAKE NOTICE that the conduct money given to you with this Summons is calculated as follows:

- | | | | |
|-----|-------------------------------------|-----------|----------|
| (a) | attendance allowance @ \$ | per day - | \$ |
| (b) | mileage allowance - | | \$ |
| (c) | overnight accommodation allowance - | | \$ |

The above fees are proper conduct money for ... day(s) attendance and, if further attendance is required, you will be entitled to additional fees.

AND TAKE NOTICE that if you fails to attend or remain in attendance as required by this Summons, a Warrant may be issued directing that you be apprehended and brought before the Court, where you may be detained in custody until your presence is no longer required.

Appendix of Forms

Form 55A

This Summons to Witness is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at, on the day of, 19 ..

Court
Seal

.....
(local registrar)
.....
(address of court office)

NOTE: The party (or solicitor) causing this Summons to Witness to be served on you, and to whom any inquiries are to be directed, is as follows:

.....
(name)
.....
(address)
.....
(telephone number)

APPENDIX OF FORMS

FORM 55B

WARRANT
(defaulting witness)

COURT

Court File Number

Before (*title and name of*) day, the day of
)
presiding judge) , 19 ..

*Court
Seal*

(*Style of Cause*)

WARRANT

TO: All Sheriffs and other peace officers in the Province of Ontario:

WHEREAS proof has been made before me that
(*name of defaulting witness*) was duly served with a
Summons to Witness requiring him to attend the sittings of this
court at on the day of , 19 ..,
and to remain in attendance at such sittings until no longer required
to give evidence on behalf of the ; that the presence
of the said is material to the ends of justice; that the
said has failed to attend (*or to remain in attendance
as the case may be*) in accordance with the requirements of the
Summons to Witness served upon him;

YOU ARE THEREFORE ORDERED to arrest the said
. and bring him before me, or such other judge
as may be presiding at the said sittings, to give evidence in this pro-
ceeding, or if the court is not then sitting or if the said
is found in a county other than that in which the court is sitting
and cannot be brought forthwith before the court, to deliver him
to a provincial correctional institution or other secure facility,
there to be detained until he can be brought before the court.

.
(*signature of judge*)

APPENDIX OF FORMS

FORM 55C

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

(Court, Court File Number, Style of Cause)

Court

WRIT OF HABEAS CORPUS AD TESTIFICANDUM

Seal

TO: . . . *(the jailer or other officer having custody of prisoner)*

By virtue of an order of this Court dated the day of
. , 19 . . , a copy of which is attached hereto;

YOU ARE HEREBY ORDERED to bring
who is detained in prison under your custody, before this Court
at *(specific location of court)* on day,
the day of , 19 . . , at (a.m. or p.m.)
to give evidence on behalf of the , and
immediately thereafter to return him to the prison from which
he was brought.

THIS WRIT is signed and sealed for the Supreme Court of Ontario
by Local Registrar of the Court at ,
on the day of , 19 . .

.
(local registrar)

.
(address of court office)

APPENDIX OF FORMS

FORM 57A

NOTICE TO ADDED PARTY

(Court, Court File Number, Style of Cause)

NOTICE TO ADDED PARTY

TO: *(added party)*

TAKE NOTICE that if you wish to apply to discharge the within order or add to, vary or set aside the judgment in this action, you must do so within 10 days from the service on you of this Notice.

AND TAKE NOTICE that if you fail to do so or fail to attend at the time and place appointed by the order, either in person or by an Ontario lawyer acting on your behalf, such order may be made and proceedings taken in your absence as may seem just; and, without any further notice, you will be bound by the judgment and any further proceedings in the action in the same manner as if you had been originally made a party thereto.

Conclude the Notice as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 57B

REPORT

(administration of estate)

(Court, Court File Number, Style of Cause)

REPORT

DATED day, the . . . day of , 19 . .

Pursuant to the judgment herein dated the day of , 19 . . , and having caused notice of the reference and a copy of the judgment to be served upon (*state the names of those served, and also the names of those upon whom the service was dispensed with and the reasons therefor*) , I proceeded to dispose of the matters referred to me, and thereupon was attended by the solicitors for all parties interested (*or as the case may be*), and I find as follows:

1. The personal estate, not specifically bequeathed by the testator, that has come into the hands of the executors and for which they are chargeable, amounts to \$, and they have paid, or are entitled to be allowed therefrom, the sum of \$, leaving a balance due from (*or to*) them of \$ (*Where there is no personal estate: No personal estate has come into the hands of the executors, nor are they chargeable with any.*)

2. The creditors' claims sent in pursuant to my advertisement in that behalf and which have been allowed are set forth in the first schedule hereto and amount altogether to \$ (*or, where applicable: No creditor has sent in a claim pursuant to my advertisement in that behalf nor has any such claim been proved before me.*)

3. The funeral expenses of the testator amounting to \$ have been paid by the executors and are allowed to them in the account of personal estate.

4. The legacies given by the testator are set forth in the second schedule hereto, and with the interest therein mentioned, remain due to the persons named (*or as the case may be*).

Appendix of Forms

Form 57B

5. The personal estate of the said testator outstanding or undisposed of is set forth in the third schedule hereto.

In this schedule, the personal estate not specifically bequeathed should be set forth separately from the other personalty outstanding or undisposed of. Where there is no specific bequest, it should be so stated in the body of the report.

6. The real estate which the said testator was seized of or entitled to, and the encumbrances, if any, affecting the same, are set forth in the fourth schedule hereto.

7. The rents and profits of the testator's real estate received by the said executors, with which they are chargeable, amount to \$ and they have paid, or are entitled to be allowed therefrom, the sum of \$, leaving a balance due from (or to) them of \$, on that account (or, where applicable: No rents and profits have come to the hands of the said executors, nor are they chargeable with any).

8. I have allowed the said executors the sum of \$ as compensation for their personal services in the management of the said estate.

9. I have caused the real estate, other than parcels which were specifically devised, to be sold and the purchasers have paid their purchase money into court.

10. In the schedule, I have shown how the money in court is to be dealt with.

All schedules should be as brief as possible. Only the general character of the things described should be shown. Lands should be described without setting forth metes and bounds.

APPENDIX OF FORMS

FORM 57C

NOTICE OF CONTESTATION
(of claim by creditor)

(Court, Court File Number, Style of Cause)

NOTICE OF CONTESTATION

TO: *(name of creditor)*

TAKE NOTICE that the claim sent in by you in this matter is being contested.

AND TAKE NOTICE that you are hereby required to prove your claim before the Master *(or as the case may be)* by attending personally, or by your solicitor, at his office at *(specific location of office)* on the day of, 19 .., at *(a.m. or p.m.)*

.....
*(name of person, or his solicitor,
having carriage of the reference)*

APPENDIX OF FORMS

FORM 57D

NOTICE TO CREDITOR
(to obtain payment of claim)

(Court, Court File Number, Style of Cause)

NOTICE TO CREDITOR

TO:

TAKE NOTICE that the amount directed to be paid to you by an order of this court made in this action on the day of , 19 .. , may be obtained by you at the office of the Accountant of the Supreme Court at Toronto on or after the day of , 19 ..

DATED at , this ... day of , 19 ..

.....
*(name of person, or his solicitor,
having carriage of the reference)*

APPENDIX OF FORMS

FORM 57E

CONDITIONS OF SALE

(Court, Court File Number, Style of Cause)

CONDITIONS OF SALE

1. No person shall advance the bidding in an amount less than \$10. at any bidding under \$500. nor in an amount less than \$20. at any bidding over \$500. No person shall be allowed to retract his bidding.

2. The highest bidder shall be the purchaser. Where any dispute arises as to who is the last or highest bidder, the property shall be put up again.

3. The parties to the action, with the exception of the vendor and *(names of any parties, trustees, agents, or others who are in a fiduciary situation)*, shall be at liberty to bid.

4. The purchaser shall, at the time of the sale, pay to the vendor or his solicitor a deposit in proportion of \$10. for every \$100. of the purchase price; and shall pay the remainder of the purchase price on the day of, 19.. Upon such payment, the purchaser shall be entitled to the conveyance and to be let into possession. The purchaser, at the time of sale, shall sign an agreement for the completion of the purchase.

5. The purchaser shall have the conveyance prepared at his own expense and tender it to the vendor or his solicitor for execution.

6. Where the purchaser fails to comply with any of these conditions, the deposit and all other payments made thereon shall be forfeited and the premises may be re-sold. The deficiency, if any, on such resale, together with all charges attending the same, or occasioned by the defaulter, are to be paid by the defaulter.

APPENDIX OF FORMS

FORM 57F

REPORT ON SALE

(Court, Court File Number, Style of Cause)

REPORT ON SALE

1. Pursuant to the judgment in this action dated the day of , 19 . . , in the presence of *(or after notice to)* all parties concerned, I settled the form of an advertisement and the conditions of sale for the sale of the lands referred to in the said judgment.

2. Such advertisement having been published as directed, the said lands were offered for sale by public auction by me *(or by , an auctioneer appointed by me for that purpose)* on the day of , 19 . .

3. The sale was conducted in a fair, open and proper manner and was declared the highest bidder for and became the purchaser of the said lands at the price of \$, payable as follows:

. (set out shortly the conditions of sale as to payment of the purchase money)

I HEREBY CERTIFY that all the foregoing was performed to my satisfaction in a proper and sufficient manner.

DATED at , this day of , 19 . .

.....
*(signature of Master,
or as the case may be)*

ORDER FOR SECURITY FOR COSTS

Before (*title and name of presiding*) day, the day of
)
 judge or officer) , 19 ..

Seal (Style of Cause)

Seal

UDON 4 11.0 6.1 1.6 1.4 1.2 : 41.4

1 IT IS ORDERED that within _____ days from the date this

APPENDIX OF FORMS

FORM 59A

NOTICE OF APPOINTMENT TO TAX
A PARTY AND PARTY BILL OF COSTS

(Court, Court File Number, Style of Cause)

NOTICE OF APPOINTMENT TO TAX
A PARTY AND PARTY BILL OF COSTS

Upon the application of ,
I HEREBY APPOINT day, the day of ,
19 . . , at (a.m. or p.m.), at my office at *(specific
location of office of taxing officer)* for the taxation
before me of the party and party Bill of Costs of
. now filed with me.

DATED at , this day of , 19 . .

.
(signature of taxing officer)

APPENDIX OF FORMS

FORM 59B

NOTICE OF APPOINTMENT TO DELIVER A PARTY
AND PARTY BILL OF COSTS FOR TAXATION

(Court, Court File Number, Style of Cause)

NOTICE OF APPOINTMENT TO DELIVER A PARTY
AND PARTY BILL OF COSTS FOR TAXATION

Upon the application of ,
I HEREBY APPOINT day, the day of , 19 .. ,
at (*a.m.* or *p.m.*), at my office at (*specific
location of office of taxing officer*) for the taxation before
me of the party and party Bill of Costs of
who shall file such Bill of Costs with me and serve a copy thereof
upon every party interested in the taxation at least 7 days before
the date appointed for the taxation.

DATED at , this day of , 19 ..

.....
(signature of taxing officer)

APPENDIX OF FORMS

FORM 59C

CERTIFICATE OF TAXATION

(Court, Court File Number, Style of Cause)

CERTIFICATE OF TAXATION

I HEREBY CERTIFY that, pursuant to *(identify the authority for the taxation)* , I have taxed the party and party costs of in this proceeding at the sum of \$

DATED at , this day of , 19 ..

.....
(signature of Taxing Officer)

APPENDIX OF FORMS

FORM 61A

WRIT OF SEIZURE AND SALE

(Court, Court File Number, Style of Cause)

Court

WRIT OF SEIZURE AND SALE

Seal

TO: The Sheriff of any county in Ontario

By virtue of a judgment in this action dated the day of , 19 . . , YOU ARE HEREBY ORDERED to seize and sell the goods and chattels and lands and tenements in your county of (*judgment debtor*) and to realize from such sale the following sums:

- (a) \$ together with interest at % per annum from the day of , 19 . . (*as specified in the judgment*); and
- (b) \$ for the taxed costs of (*judgment creditor*) , together with interest at % per annum from the day of , 19 . . , (*as specified in the judgment*).

AND YOU ARE FURTHER ORDERED to pay out (*or, to pay into court as the case may be*) the proceeds of the sale according to law.

AND YOU ARE FURTHER ORDERED to return this Writ to this office as soon as it has been executed or has expired.

THIS WRIT is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at , on the day of , 19 . .

.....
(*local registrar*)

.....
(*address of court office*)

ENDORSEMENT

The is entitled to receive for this Writ and each renewal thereof, the following sums:

For this Writ: \$
(signature of officer)

For the first renewal \$
(signature of officer)

For the second renewal: \$
(signature of officer)

etc. (as may be necessary)

(name and address
of party filing Writ
with Sheriff)

(name)

(address)

(name and address
of solicitor, if any,
for party filing writ
with Sheriff)

(name)

(address)

DIRECTION TO LEVY

To the Sheriff of the County of

YOU ARE HEREBY DIRECTED to levy the sum of \$
with interest at % per annum from the day of,
19 . . , and the sum of \$ for costs, with interest at %
per annum from the day of , 19 . . , together with
your own fees and expenses.

DATED at , this day of , 19 . .

.....
(signature of party or solicitor
giving the Direction to Levy)

APPENDIX OF FORMS

FORM 61B

WRIT OF POSSESSION

(Court, Court File Number, Style of Cause)

*Court
Seal*

WRIT OF POSSESSION

TO: The Sheriff of the County of

By virtue of a judgment in this action dated the day
of, 19 .., YOU ARE HEREBY ORDERED
to enter and take possession of the following land (and premises
if such be the case) in your county:
..... and without delay give possession of the
same to

THIS WRIT is signed and sealed for the Supreme Court of Ontario
by Local Registrar of the Court at
on the day of, 19 .., and is issued pursuant
to the order of, dated the day of,
19 ..

.....
(local registrar)

.....
(address of court office)

.....
*(name of party or solicitor
filing Writ)*

.....
(address)

APPENDIX OF FORMS

FORM 61C

WRIT OF DELIVERY

(Court, Court File Number, Style of Cause)

Court
Seal

WRIT OF DELIVERY

TO: The Sheriff of the County of

By virtue of a judgment in this action dated the day
of, 19 .., YOU ARE HEREBY ORDERED
to seize from and without delay
deliver to the following:
.....
.....

THIS WRIT is signed and sealed for the Supreme Court of
Ontario by Local Registrar of the Court at,
on the day of, 19 ..

.....
(local registrar)

.....
(address of court office)

.....
*(name of party or solicitor
filing Writ)*

.....
(address)

APPENDIX OF FORMS

FORM 61D

REQUEST TO RENEW
(Writ of Seizure and Sale)

(Court, Court File Number, Style of Cause)

REQUEST TO RENEW

TO: The Sheriff of the County of
(or the Local Registrar at *as the case may be*)

The Writ of Seizure and Sale in this action filed with you
(or issued by you *as the case may be*) expires on the day of
....., 19 ..

YOU ARE HEREBY REQUESTED to renew the said Writ for
a further period of six years from the date of this Request.

DATED at, this day of, 19 ..

.....
*(signature of party or solicitor
requesting renewal)*

.....
(address)

APPENDIX OF FORMS

FORM 61E

CERTIFICATE OF SHERIFF
(as to execution of Writ)

(Court, Court File Number, Style of Cause)

CERTIFICATE OF SHERIFF

TO: The Local Registrar at

A Writ of in this action issued from your office
on the day of , 19 .., is now filed with me.

I HEREBY CERTIFY that I have executed the said Writ in
the following manner:
.....
and have so endorsed the Writ accordingly.

DATED at, this day of , 19 ..

.....
(sheriff)

.....
(address of sheriff's office)

APPENDIX OF FORMS

FORM 61F

WARRANT FOR COMMITTAL

(Court, Court File Number, Style of Cause)

Court

Seal

WARRANT

TO: All Sheriffs and other peace officers in the Province of Ontario:

By virtue of an order of this Court in this action dated the day of , 19 .. , a copy of which is attached hereto, declaring that is in contempt of court for the reasons set out therein and directing that he be committed for such contempt.

YOU ARE HEREBY ORDERED to apprehend the said and, if this Court is sitting at that time, to bring him before this Court to answer for his contempt.

But if this Court is not sitting at the time the said is apprehended, YOU ARE HEREBY ORDERED to deliver him to a provincial correctional institution or other secure facility, there to be detained until he can be brought before the Court.

THIS WARRANT is signed and sealed for the Supreme Court of Ontario by , Local Registrar of the Court at , on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

APPENDIX OF FORMS

FORM 61G

WRIT OF SEQUESTRATION

(Court, Court File Number, Style of Cause)

Court

WRIT OF SEQUESTRATION

Seal

By virtue of an order of this Court in this action dated the
day of , 19 . . , a copy of which is attached hereto:

YOU ARE HEREBY ORDERED to take possession of all lands,
tenements, goods, chattels and personal property in your county of
. and to keep the same in your hands until
further order of this Court.

THIS WRIT is signed and sealed for the Supreme Court of
Ontario by Local Registrar of the Court
at , on the . . . day of , 19 . .

.
(local registrar)

.
(address of court office)

APPENDIX OF FORMS

FORM 61H

GARNISHEE ORDER

COURT

Court File Number

Before (*title and name of presiding*) day, the day of
judge or officer))
) , 19 ..

Between:

A.B. Judgment Creditor

and

Court

C.D. Judgment Debtor

Seal

and

X.Y. Garnishee

GARNISHEE ORDER

Upon the application of the judgment creditor, in the presence of counsel for the applicant and for (*or, where such be the case: no one appearing for the judgment debtor although duly served with notice*), upon reading the affidavit of , filed, and it appearing that the judgment of the judgment creditor remains unsatisfied and that the garnishee is or will become indebted to the judgment debtor, and upon hearing what was alleged by counsel aforesaid:

1. IT IS ORDERED that all debts owing or accruing due from the garnishee to the judgment debtor be attached to answer the judgment debt.

Appendix of Forms

Form 61H

2. AND IT IS FURTHER ORDERED that the garnishee attend before (*name of judge or officer, as the case may be*) at (*specific location of office of judge or officer*) on day, the day of , 19 . . , at (a.m. or p.m.) to show cause why the debt due or to become due from him to the judgment debtor should not be paid into court to the credit of this matter.

APPENDIX OF FORMS

FORM 61 I

NOTICE OF GARNISHEE ORDER
(to be served outside Ontario)

*(Court, Court File Number,
Style of Cause as in Form 61 H)*

NOTICE OF GARNISHEE ORDER

TO: X.Y., of

TAKE NOTICE that an order was obtained in this court on the day of, 19 .., attaching all debts owing or accruing due from you to the judgment debtor.

AND TAKE NOTICE that an application will be made by the judgment creditor before *(name of judge or officer, as the case may be)* at *(specific location of office of judge or officer, as the case may be)* on day, the day of, 19 .., at *(a.m. or p.m.)* for a further order that the debt due or to become due from you to the judgment debtor be paid into this court to the credit of this matter.

AND TAKE NOTICE that if you do not attend at the appointed time and place, an order may be made in your absence.

DATED at, this day of, 19 ..

.....
(solicitor for judgment creditor)

APPENDIX OF FORMS

FORM 62A

NOTICE OF APPEAL

(Court, Court File Number, Style of Cause)

NOTICE OF APPEAL

TAKE NOTICE that the appeals to the Court of Appeal *(or the Divisional Court as the case may be)* from the judgment *(or order)* pronounced by on the day of , 19 ..

The appellant asks that the said judgment *(or order)* be reversed and that judgment be entered as follows: *(set out briefly what is desired)* *(or The appellant asks that a new trial be held or as the case may be).*

The appellant’s grounds for this appeal are as follows: *(set out the grounds clearly but briefly)*

Where the appeal is to the Divisional Court, add:

The appellant proposes that this appeal be heard at the City of

DATED at , this day of , 19 ..

.....
(signature of solicitor for appellant)

.....
(business address)

.....
(telephone number)

APPENDIX OF FORMS

FORM 62B

SUPPLEMENTARY NOTICE OF APPEAL

(Court, Court File Number, Style of Cause)

SUPPLEMENTARY NOTICE OF APPEAL

TAKE NOTICE that the appellant amends his Notice of Appeal dated the day of, 19 .., in the following manner: *(set out the amendment clearly but briefly)*

DATED at, this day of, 19 ..

.....
(signature of solicitor for appellant)

.....
(business address)

.....
(telephone number)

APPENDIX OF FORMS

FORM 62C

NOTICE OF CROSS-APPEAL

(Court, Court File Number, Style of Cause)

NOTICE OF CROSS-APPEAL

TAKE NOTICE that the respondent, having been served with a Notice of Appeal herein on the day of, 19 . ., cross-appeals in this appeal and asks that the judgment (*or order*) appealed from be varied as follows: (*set out briefly what is desired*)

The respondent's grounds for this cross-appeal are as follows:
. (*set out the grounds clearly but briefly*)

DATED at, this day of, 19 . .

.
(*signature of solicitor for respondent*)

.
(*business address*)

.
(*telephone number*)

APPENDIX OF FORMS

FORM 62D

NOTICE OF CONTENTION

(Court, Court File Number, Style of Cause)

NOTICE OF CONTENTION

TAKE NOTICE that the respondent, having been served with a Notice of Appeal herein on the day of , 19 . . , contends that the judgment (*or* order) appealed from should be affirmed on grounds other than those given by the court appealed from and such grounds are as follows: (*set out the grounds clearly but briefly*)

or, where such be the case:

contends that in the event that the appeal is allowed in whole or in part, the respondent is entitled to other or different relief or disposition than that given by the judgment appealed from and such relief or disposition is as follows: (*set out briefly what is desired*)

DATED at , this day of , 19 . .

.....
(*signature of solicitor for respondent*)

.....
(*business address*)

.....
(*telephone number*)

APPENDIX OF FORMS

FORM 62E

CERTIFICATE OF APPELLANT

(Court, Court File Number, Style of Cause)

CERTIFICATE OF APPELLANT

The solicitor for the appellant hereby certifies that the following exhibits *(by number)* and the following evidence *(by witness)* are not required for the appeal herein:

EXHIBITS <i>(by number)</i>	EVIDENCE <i>(by witness)</i>
-----------------------------	------------------------------

.....
.....

<i>etc.</i>	<i>etc.</i>
-------------	-------------

DATED at, this day of, 19 ..

.....
(signature of solicitor for appellant)

.....
(business address)

.....
(telephone number)

APPENDIX OF FORMS

FORM 62F

CERTIFICATE OF RESPONDENT

(Court, Court File Number, Style of Cause)

CERTIFICATE OF RESPONDENT

The solicitor for the respondent hereby confirms the Certificate of Appellant.

or, where such is the case, substitute:

The solicitor for the respondent hereby certifies that the exhibits and the evidence set out in the Certificate of Appellant are not required for the appeal, subject to the following additions and deletions:

EXHIBITS <i>(by number)</i>		EVIDENCE <i>(by witness)</i>	
Add:	Delete:	Add:	Delete:
.....
.....
<i>etc.</i>			

DATED at, this day of, 19 ..

.....
(signature of solicitor for respondent)

.....
(business address)

.....
(telephone number)

APPENDIX OF FORMS

FORM 62G

CERTIFICATE OF DISMISSAL

Court

(Court, Court File Number, Style of Cause)

Seal

CERTIFICATE OF DISMISSAL

IT IS HEREBY CERTIFIED that the appeal of
..... from the judgment (*or* order) pronounced by
..... on the day of , 19 ..
not having been perfected as required by the Rules of this Court,
has been dismissed by me as an abandoned appeal with costs payable
by the appellant to the respondent forthwith after taxation thereof.

ISSUED this day of , 19 ..

.....
(Registrar)

APPENDIX OF FORMS

FORM 62H

NOTICE OF ELECTION TO PROCEED

(Court, Court File Number, Style of Cause)

NOTICE OF ELECTION

The appeal herein having been discontinued (*or abandoned as the case may be*) on the day of, 19 . . , TAKE NOTICE that the respondent elects to proceed with his cross-appeal herein.

DATED at , this day of , 19 . .

.....
(signature of solicitor for respondent)

.....
(business address)

.....
(telephone number)

APPENDIX OF FORMS

FORM 65A

REQUEST TO REDEEM

(Court, Court File Number, Style of Cause)

REQUEST TO REDEEM

TAKE NOTICE that the defendant requests an opportunity to redeem the mortgaged property.

Where the defendant is a subsequent encumbrancer, add:

The particulars of the defendant's claim, which is verified by the attached affidavit, are as follows:
.....

DATED at this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 65B

JUDGMENT FOR IMMEDIATE FORECLOSURE OR SALE
(and for payment and possession)

In the Supreme Court of Ontario

Court File No.

Court

(Style of Cause)

Seal

JUDGMENT

. day, the day of , 19 . .

UPON reading the Statement of Claim issued in this action and an affidavit of service of the same, and no Statement of Defence or Request to Redeem the mortgaged property having been filed,

1. IT IS ORDERED AND ADJUDGED that the defendant stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property; (*where the judgment is for sale, after "adjudged", substitute: that the said property be sold, with the approbation of the Master at*).

2. *Where judgment is for foreclosure, omit this clause:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the purchasers do **pay their** purchase money into court to the credit of this action and that the same when so paid in be applied in payment of what is found to be due to the said plaintiff for principal money, interest and costs as computed and taxed by the said Master, and that the balance do abide the further order of the court.

3. *Where judgment is for immediate payment, add:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$ being the amount due to him at the date hereof for principal money, interest and costs.

Appendix of Forms

Form 65B

4. *Where judgment is for possession, add:*

AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged property, or of such part thereof as may be in the possession of the said defendant.

.....
(local registrar)

.....
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 65C

JUDGMENT FOR FORECLOSURE OR SALE
WITH A REFERENCE
(and for payment and possession)

In the Supreme Court of Ontario

Court File No.

Court

(Style of Cause)

Seal

JUDGMENT

..... day, the day of , 19 ..

UPON reading the Statement of Claim in this action and an affidavit of service of the same, and no Statement of Defence or Request to Redeem the mortgaged property having been filed:

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for redemption or foreclosure (*or sale as the case may be*), and that for these purposes this action be referred to the Master at

2. *where judgment is for immediate payment, add:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$, being the amount found due to him at the date hereof for principal money, interest and costs; and upon payment of the amount due to the plaintiff (*where judgment is for sale, add: before the sale hereinbefore directed shall have taken place*) that, subject to the provisions of Section 2 of *The Mortgages Act*, the plaintiff assign and convey the mortgaged property, and deliver up all documents relating thereto.

3. *or, where judgment is for amount found due by Master, add:*

AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith after the making of the Master's report pay to the plaintiff what shall be found due to him for principal money, interest and costs at the date of the said report and upon payment of the amount due to the plaintiff (*where judgment is for sale, add: before the sale hereinbefore directed shall have taken place*) that, subject to the provisions of Section 2 of *The Mortgages Act*, the plaintiff assign and convey the mortgaged property, and deliver up all documents relating thereto.

4. *where judgment is for possession, add:*

AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged property or of such part thereof as may be in the possession of the said defendant.

.....
(local registrar)

.....
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 65 D

FINAL ORDER OF FORECLOSURE

COURT

Court File No.

Before (*title and name of*) day, the day
presiding judge or) , 19 ..
officer))

(*Style of Cause*)

FINAL ORDER OF FORECLOSURE

Where the final order follows a judgment granting a period of redemption:

Upon the application of the plaintiff, and upon hearing the solicitor for the said plaintiff, and upon reading the judgment herein dated the day of, 19 .., (*where there is an order for a new day, add: and the order for a new day made herein and dated the day of, 19 ..*), (*where a notice of change of account has been delivered, add: the notice of change of account and the proof of service thereof*) and the certificate of the of the (*bank*) at and the affidavit of execution thereof, and the affidavit of the said plaintiff:

1. IT IS ORDERED that the defendants do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

Where the final order follows a report granting a period of redemption:

Upon the application of the plaintiff, and upon hearing the solicitor for the said plaintiff, upon reading the report herein dated the day of ., 19 .., and filed, the affidavit of service of the said report (*where there is an order for a new day, add: and the order for a new day made herein and dated the day of, 19 ..*), (*where a notice of change of account has been delivered, add: the notice of change of account and the proof of service thereof*) and the certificate of the of the (*bank*) at ... and the affidavit of execution thereof, and the affidavit of the said plaintiff; and it appearing that default has occurred in redemption by the defendants entitled to redeem:

Appendix of Forms

Form 65D

1. IT IS ORDERED that the defendants (*those failing to file a Request to Redeem, failing to prove a claim or failing to redeem*) do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

Where the final order follows a report where no period of redemption is granted:

Upon the application of the plaintiff, and upon hearing the solicitor for the said plaintiff, and upon reading the report made herein dated the day of, 19 .., and filed, the affidavit of service of the said report, and the affidavit of the said plaintiff; and it appearing that no defendant is entitled to redeem:

1. IT IS ORDERED that the defendants do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

Where the final order follows redemption by an encumbrancer:

Upon the application of the defendant (*who has redeemed*), and upon hearing the solicitor for the said defendant, and upon reading the judgment herein dated the day of, 19 .., (*where there is a report, add: and the report made herein dated the day of, 19 .., and filed, the affidavit of service of the said report*) the certificate of the of the (*bank*) at, and the affidavit of execution thereof, and the affidavit of the defendant ; and it appearing that the said defendant has redeemed the plaintiff herein, and has obtained an assignment of the judgment and mortgage and has registered the latter, and that default has occurred by the defendants :

1. IT IS ORDERED that the defendants (*those failing to file a Request to Redeem, failing to prove a claim, or failing to redeem*) do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

Appendix of Forms

Form 65D

Where the final order follows the redemption of a prior encumbrancer by a defendant who is then entitled to foreclose any remaining defendants:

Upon the application of the defendant (who has redeemed) , and upon hearing the solicitor for the said defendant, and upon reading the order made herein dated the day of . . . , 19 . . , (where other defendants have been given the right to redeem and have defaulted in payment, add: and the proof of service thereof) and the certificate of the of the (bank) at , and the affidavit of execution thereof, and the affidavit of the said defendant; and it appearing that the defendant (applicant) has redeemed the defendant , and has obtained an assignment of the plaintiff's mortgage and of the said defendant's mortgage and has registered the same and has also obtained an assignment of the judgment herein, the defendants (those who have failed to file a Desire to Redeem, failed to prove a claim or failed to redeem pursuant to the said order) having defaulted (state nature of default) :

1. IT IS ORDERED that the defendants do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

Where the final order follows a report in a redemption action and where it is necessary to refer the matter back to the master to complete the redemption proceedings:

Upon the application of the defendant , and upon hearing the solicitor for the said defendant, upon reading the report made herein dated the day of , 19 . . , and filed, the affidavit of service of the said report, the certificate of the of the (bank) at , and the affidavit of execution thereof, and the affidavit of the defendant ; and it appearing that default has occurred in redemption by the plaintiff: (where there are subsequent encumbrancers and the defendant wishes to foreclose them, add: and it appearing that there are encumbrancers subsequent to the plaintiff's mortgage with respect to which the defendant desires to proceed), (where there is more than one defendant and it is necessary to have an accounting as between them, add: and it appearing that it is necessary to take accounts as between the defendants):

Appendix of Forms

Form 65D

1. IT IS ORDERED that the plaintiff do stand absolutely debarred and foreclosed of and from all right, title and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

2. *Where subsequent encumbrancers are to be foreclosed:* AND IT IS FURTHER ORDERED that all necessary inquiries be made, accounts taken and proceedings had for redemption or foreclosure (*or redemption or sale as the case may be*) as against any subsequent encumbrancers, and that for these purposes this action be referred to the Master at

3. *Where accounts are to be taken:* AND IT IS FURTHER ORDERED that all necessary inquiries be made, accounts taken and proceedings had for the adjustment of the relative rights and liabilities of the original defendants as among themselves.

NOTE: Any of the preceding types of orders within this Form may be used in a redemption action by reversing the identity of the parties where such is necessary.

APPENDIX OF FORMS

FORM 65E

JUDGMENT FOR FORECLOSURE OR SALE

(and for payment and possession)

In the Supreme Court of Ontario

Court File No.

*Court
Seal*

(Style of Cause)

JUDGMENT

. day, the day of , 19 . .

UPON reading the Statement of Claim issued in this action and an affidavit of service of the same, and no Statement of Defence having been filed, and a Request to Redeem having been filed, and the account having been taken in the presence of the defendant (*or the solicitor for the defendant as the case may be, or the defendant or his solicitor not having appeared on the taking of the account although duly notified*):

1. THIS COURT FINDS that the subsequent interest at the rate of % per annum on the sum of \$ principal money secured by the mortgage mentioned in the Statement of Claim, up to the day of , 19 . . , being the time appointed for payment as hereinafter mentioned amounts to \$ and that the costs of the plaintiff amount to \$, which interest and costs being added to the sum of \$ claimed in the Statement of Claim make together the sum of \$

2. AND UPON the defendant paying the said sum of \$ into the bank at on the day of , 19 . . , to the joint credit of the plaintiff and the Accountant of the Supreme Court [*where judgment is also for immediate payment, insert: or in case the plaintiff shall (where judgment is for sale, add: before the sale hereinafter directed shall have taken place) recover the amount due to him under the order for payment hereinafter contained*], IT IS ORDERED AND ADJUDGED, subject to Section 2 of *The Mortgages Act*, that the plaintiff assign and convey the mortgaged property, and deliver up all documents relating thereto.

3. But in default of the defendant making such payment by the time aforesaid, IT IS ORDERED AND ADJUDGED that the said defendant stand absolutely debarred and foreclosed from all equity of redemption in and to the mortgaged property; (*where the judgment is for sale, after "adjudged", substitute: that the said property be sold with the approbation of the Master at*);

4. *Where more than one party is entitled to redeem, add:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant (*encumbrancer*) is entitled to the first right to redeem and the defendant (*mortgagor*) is entitled to the last right to redeem.

5. *Where judgment is for foreclosure, omit this clause:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the purchasers pay their purchase money into court, to the credit of this cause and that the same when so paid in be applied in payment of what has been found due to the said plaintiff, together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance abide the further order of the court.

6. *Where judgment is for immediate payment, add:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$ being the amount due to him at the date hereof for principal money, interest and costs.

7. *Where judgment is for possession, add:*
AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith deliver to the plaintiff or to whom he may appoint, possession of the mortgaged property, or of such part thereof as may be in the possession of the said defendant

.....
(local registrar)

.....
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 65F

REQUEST FOR SALE

(Court, Court File Number, Style of Cause)

REQUEST FOR SALE

TAKE NOTICE that the defendant requests a sale of the mortgaged property mentioned in the Statement of Claim.

Where the defendant is a subsequent encumbrancer, add:

Attached hereto is a Certificate of the Accountant of the Supreme Court of Ontario that the defendant has paid into court to the credit of this action the sum of \$250. as security for the costs of the plaintiff and of any other party having carriage of the sale.

The particulars of the said defendant's claim, which is verified by the attached affidavit, are as follows:
.....

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 65G

CONDITIONAL JUDGMENT FOR SALE

In the Supreme Court of Ontario

Court File No.

*Court
Seal*

(Style of Cause)

JUDGMENT

..... day, the day of, 19 ..

UPON reading the Statement of Claim issued in this action and an affidavit of service of the same, and no Statement of Defence or Request to Redeem the mortgaged property having been filed, and the defendant having delivered a Request for Sale:

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for redemption or sale and that for those purposes this cause be referred to the Master at

2. AND IT IS FURTHER ORDERED AND ADJUDGED that, should the said defendant fail to prove any claim on the reference for sale, the Master shall proceed as upon a reference for redemption or foreclosure.

.....
(local registrar)

.....
(address of court office)

APPENDIX OF FORMS

FORM 65H

JUDGMENT FOR IMMEDIATE SALE WITH A REFERENCE
(and for payment and possession)

In the Supreme Court of Ontario

Court File No.

Court

(Style of Cause)

Seal

JUDGMENT

. day, the day of , 19 . .

UPON reading the Statement of Claim issued in this action and an affidavit of service of the same, and no Statement of Defence or Request to Redeem the mortgaged property having been filed,

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the immediate sale of the mortgaged property in question herein without the appointment of any day for redemption of the said mortgaged property, and that for these purposes this action be referred to the Master at

2. AND IT IS FURTHER ORDERED AND ADJUDGED that the purchasers pay their purchase money into court to the credit of this action and the same when so paid in be applied in payment of what shall be found due to the said plaintiff, together with subsequent interest and subsequent costs to be computed and taxed by the said Master and that he also determine those parties or persons entitled to the balance of the money and the amounts to which they are entitled.

Appendix of Forms

Form 65H

Where judgment is for immediate payment, add:

3. AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith pay to the plaintiff the sum of \$ being the amount found due to him at the date hereof for principal money, interest and costs; and upon payment of the amount due to the plaintiff before the sale hereinbefore directed shall have taken place that, subject to the provisions of Section 2 of *The Mortgage Act*, the plaintiff assign and convey the mortgaged property, and deliver up all documents relating thereto.

Where judgment is for possession, add:

4. AND IT IS FURTHER ORDERED AND ADJUDGED that the defendant forthwith deliver to the plaintiff, or to whom he may appoint, possession of the mortgaged property, or of such part thereof as may be in the possession of the said defendant.

.....
(local registrar)

.....
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 65 I

JUDGMENT FOR REDEMPTION

In the Supreme Court of Ontario

Court File No.

Court

(Style of Cause)

Seal

JUDGMENT

. day, the day of , 19 . .

UPON reading the Statement of Claim issued in this action and an affidavit of service of the same, and no Statement of Defence having been filed:

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs taxed, and proceedings had for the redemption of the property in question, and that for this purpose the action be referred to the Master at

2. AND, subject to the provisions of Section 2 of *The Mortgages Act*, IT IS FURTHER ORDERED AND ADJUDGED that, upon the plaintiff paying to the defendant what shall be found due to him, or, in case nothing shall be found due to him, then forthwith after the confirmation of the said Master's report, the defendant reconvey the mortgaged property and deliver up all documents relating thereto.

3. AND IT IS FURTHER ORDERED AND ADJUDGED that, in case the plaintiff makes default in payment of what may be found due to the defendant, this action stands dismissed with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

4. AND IT IS FURTHER ORDERED AND ADJUDGED that, in case nothing is found due to the defendant the said defendant pay the plaintiff his costs of this action forthwith after taxation thereof; and, in case any balance is found due from the defendant to the plaintiff, that the defendant pay such balance to the plaintiff forthwith after confirmation of the Master's report.

.
(local registrar)

.
(address of court office)

Where the plaintiff is entitled to post judgment interest, the rate of interest and the date from which such interest is to run shall be specified.

APPENDIX OF FORMS

FORM 65J

NOTICE OF REFERENCE TO ADDED PARTY
HAVING ENCUMBRANCE

*(Court, Court File Number, Style of Cause
including added parties, if any)*

NOTICE OF REFERENCE

TO: made a party in the Master's office.

Whereas an action has been commenced by the above-named plaintiff for the foreclosure (*or sale*) of (*or enforcement of a lien on*) certain lands (*insert description of lands*), and I have been directed by the judgment made in this action on the day of, 19 .., to inquire whether any person, other than the plaintiff, has any charge, lien or encumbrance upon the said lands; I have therefore caused you to be made a party to this action, and have appointed day, the day of, 19 .., at (a.m. *or* p.m.), for you to appear before me at my chambers at, in the City (*or Town*) of either in person or by your solicitor to prove your claims.

Where no Request to Redeem has been filed by the mortgagor or owner and the judgment is for sale, add:

At the same time, I shall settle the conditions of sale and advertisement and make any other necessary preparations for the sale of the mortgaged property.

YOU ARE HEREBY REQUIRED TO TAKE NOTICE that:

- (a) if you wish to apply to discharge my order making you a party, or to add to, vary or set aside the judgment, you must do so within 10 days after service upon you of this Notice, and if you fail to do so, you will be bound by the judgment, and the further proceedings in this action, as if you were originally made a party to the action; and

Appendix of Forms

Form 65J

- (b) if you fail to attend at the time and place appointed and prove a claim, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

DATED at , this day of , 19 . .

.....
(Master)

APPENDIX OF FORMS

FORM 65K

NOTICE OF REFERENCE TO ORIGINAL PARTY
HAVING ENCUMBRANCE

*(Court, Court File Number, Style of Cause
including added parties, if any)*

NOTICE OF REFERENCE

TO:

Having been directed by the judgment in this action to inquire whether any person, other than the plaintiff, has any lien, charge or encumbrance upon the lands in question in this action subsequent to the plaintiff's claim, and to take an account of the amount due to the plaintiff and any such person, and it appearing that you may have some lien, charge or encumbrance thereon, YOU ARE HEREBY NOTIFIED that I have appointed day, the day of, 19 .., at my chambers at in the City (*or* Town) of at (a.m. *or* p.m.) to proceed with the said inquiry and to determine the amount of the claim of the plaintiff, and of such encumbrancers as may come in and prove their claims before me.

If you fail to attend upon such appointment and to prove your claim, the reference may proceed in your absence, and you will receive no further notice of the proceedings in this action, and you will be treated as disclaiming any lien, charge or encumbrance upon the said lands, and will stand foreclosed from any such claim.

DATED at, this ... day of, 19 ..

.....
(Master)

APPENDIX OF FORMS

FORM 65L

NOTICE OF REFERENCE TO ALL ORIGINAL DEFENDANTS

*(Court, Court File Number, Style of Cause
including added parties, if any)*

NOTICE OF REFERENCE

TO:

Having been directed by the judgment in this action to inquire whether any person other than the plaintiff has any lien, charge or encumbrance upon the lands in question in this action, subject to the plaintiff's claim thereon.

YOU ARE HEREBY NOTIFIED that it has been made to appear to me that the persons named in the schedule hereto may have some lien, charge or encumbrances thereon, *(where judgment directs the Master to add encumbrancers, add:* and I have therefore caused such of them as are not already parties thereto to be added as parties in my office) and have appointed day, the day of, 19 .., at my chambers at in the City (or Town) of at (a.m. or p.m.) to inquire and determine whether the said parties have any such lien, charge or encumbrance, and to fix and ascertain the amount thereof, and the amount of the plaintiff's claim upon his security. *(Where judgment is for sale without a period of redemption, add:* at which time I shall also settle the conditions of sale, advertisement and make any other necessary arrangements for the sale).

If you do not then and there attend, the reference will be proceeded with in your absence and you will receive no further notice of the proceedings in this action.

If you are a subsequent encumbrancer and fail to attend upon such appointment and prove your claim, you will be treated as disclaiming any lien, charge or encumbrance upon the said lands and will stand foreclosed of any such claim.

DATED this day of, 19 ..

.....
(Master)

SCHEDULE OF ENCUMBRANCERS

NAME	NATURE OF CLAIM
A.B.	Mortgage dated the day of , 19 . .
C.D.	Execution dated the day of , 19 . .
E.F.	Mechanics' Lien dated the day of , 19 . . and registered on the day of , 19 . .

.....
(Master)

APPENDIX OF FORMS

FORM 65M

NOTICE TO ADDED PARTY
(having interest in equity)

(Court, Court File Number, Style of Cause)

NOTICE TO ADDED PARTY

TO:

TAKE NOTICE that from the time of service on you of this notice, together with the copies of the judgment and order that are attached hereto, you will be bound by the proceedings in this action in the same manner as if you had originally been made a party unless within 10 days after such service you apply to this Court, to discharge the order or to add to, vary or set aside the judgment.

AND TAKE NOTICE that if you desire an opportunity to redeem the mortgaged property, you or your solicitor are required to appear at my chambers at, in the City (*or* Town) of at (a.m. *or* p.m.) and to file a Request to Redeem in the form prescribed by the Rules of this Court.

AND TAKE NOTICE that if you fail to move to discharge the order or to add to, vary or set aside the judgment, or to appear and file a Request to Redeem, you will be bound by the judgment and the further proceedings in this action, and you will be deemed to submit to an immediate foreclosure (*or* sale *as the case may be*), and will receive no further notice.

DATED at, this day of, 19 ..

.....
(Master)

APPENDIX OF FORMS

FORM 65N

FINAL ORDER FOR SALE

COURT

Court File No.

Before (*title and name of*) day, the
presiding judge or) of , 19 ..
officer))

(*Style of Cause*)

FINAL ORDER FOR SALE

Upon the application of the plaintiff, and upon hearing the solicitor for the said plaintiff, and upon reading the judgment herein dated the day of , 19 .. , and the report made herein dated the day of , 19 .. , and filed, the affidavit of service of the said report, the certificate of the of the (*bank*) at and the affidavit of execution thereof, and the affidavit of the plaintiff:

1. IT IS ORDERED that the mortgaged property mentioned in the Statement of Claim herein, or a competent part thereof, be sold forthwith pursuant to and in the manner directed by the judgment in this action with the approbation of the Master at
2. *Where appropriate, add:* AND IT IS FURTHER ORDERED that the defendants (*subsequent encumbrancers who have not proved claims*) do stand absolutely debarred and foreclosed of and from all right, title, interest and equity of redemption of, in and to the mortgaged property mentioned in the Statement of Claim herein.

APPENDIX OF FORMS

FORM 66A

JUDGMENT FOR ADMINISTRATION

COURT

Court File Number

Before (*title and name of*) day, the day of
)
presiding judge) , 19 ..

Court

Style of Cause

Seal

JUDGMENT

Upon the application of in the presence of counsel for the applicant and for (*or, where such be the case: no one appearing for although duly served with notice*), upon reading the affidavits of the applicant and of , filed, and upon hearing what was alleged by counsel aforesaid:

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the real and personal estate of and for the adjustment of the rights of all parties interested therein, by the Master at ;
2. AND IT IS FURTHER ORDERED AND ADJUDGED that all balances which may be found due from to the said estate be paid into Court to the credit of this proceeding, subject to the further order of the Court;
3. AND IT IS FURTHER ORDERED AND ADJUDGED that such real and personal estate or such parts thereof as the Master may direct, be sold as the Master may direct and that the purchasers pay their purchase money into Court to the credit of this proceeding, subject to the order of this Court;
4. AND IT IS FURTHER ORDERED AND ADJUDGED that the Master do execute conveyances for any party who is a minor and because of his age is unable to execute them.

APPENDIX OF FORMS

FORM 67A

JUDGMENT FOR PARTITION OR SALE

COURT

Court File Number

Before (*title and name of*) day, the day of
(*presiding judge*)) , 19 ..

Court

Style of Cause

Seal

JUDGMENT

Upon the application of , in the presence of counsel for the applicant and for (*or, where such be the case: no one appearing for although duly served with notice*), upon reading the affidavits of the applicant and of , filed, and upon hearing what was alleged by counsel aforesaid:

1. IT IS ORDERED AND ADJUDGED that all necessary inquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale, or for the partition of part and sale of the remainder, of the lands and premises in question in this proceeding as may be in the best interests of the parties entitled to share therein, by the Master at ;
2. AND IT IS FURTHER ORDERED AND ADJUDGED that the said lands and premises, or such part thereof as the Master shall think fit, be sold, with the approbation of the Master, free of the claims of encumbrancers, if any, whose claims were created by parties entitled to the said lands and premises before the death of the deceased and who have consented to such sale, and subject to the claims of such encumbrancers who have not consented to such sale, and that the purchasers pay their purchase money into Court to the credit of this proceeding, subject to the order of the Court;

3. AND IT IS FURTHER ORDERED AND ADJUDGED that the Master do execute conveyances for any party who is a minor and because of his age is unable to execute them;

4. AND IT IS FURTHER ORDERED AND ADJUDGED that, in the event of a partition of the said lands and premises, or in the event of a partition of a part and the proceeds of the sale of the remainder are insufficient to pay the costs in full, the costs, or so much thereof as remains unpaid, be paid by the parties according to their shares and interests in the said lands and premises (*where there are parties who are minors, add:* and that the proportion of the said costs payable by the parties who are minors respectively be, and the same is hereby declared to be, a lien on their respective shares, and that the plaintiff (*or applicant as the case may be*) pay the guardians of the said minors their costs of this proceeding and that the same be added to his own costs).

APPENDIX OF FORMS

FORM 71A

**NOTICE OF REMOVAL
(mental incompetency proceeding)**

(Court, Court File Number, Style of Cause)

NOTICE OF REMOVAL

TAKE NOTICE that the respondent
requires these proceedings to be removed into the Supreme Court
of Ontario.

DATED at, this day of, 19 ..

*Conclude the Form as to name and address (with the appropriate
changes) as in Form 16A.*

APPENDIX OF FORMS

FORM 72A

PETITION FOR DIVORCE

In the Supreme Court of Ontario

Court File No.

Between:

A.B.

Petitioner

*Court
Seal*

and

C.D.

Respondent

PETITION FOR DIVORCE

Notice to the above-named respondent:

TAKE NOTICE that legal proceedings have been commenced against you by the issuing of this Petition for Divorce;

AND TAKE NOTICE that if you wish to defend these proceedings, either you or an Ontario lawyer acting on your behalf shall prepare your Answer (in the form prescribed by the Rules of this Court) and serve it on the petitioner or his lawyer and, with proof of such service, file it in this court office,

- (a) where you are served in Ontario, WITHIN 20 DAYS after service on you of this Petition for Divorce; or
- (b) where you are served out of Ontario but elsewhere in Canada or in one of the United States of America, WITHIN 40 DAYS after such service on you; or
- (c) where you are served anywhere else in the world, WITHIN 60 DAYS after such service;

AND TAKE NOTICE that where this Petition for Divorce contains a claim for corollary relief, your Answer shall be accompanied by your Financial Statement in the form prescribed by the Rules of this court.

AND TAKE NOTICE that where you are required to deliver your Financial Statement by the Rules of this court, you are required to do so within the time prescribed for the delivery of your Answer whether or not you wish to defend these proceedings.

AND TAKE NOTICE that if you fail to do so, such failure may result in the loss of your legal rights and you may also be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

AND TAKE NOTICE that you may ascertain from this court office the approximate date of the trial of this proceeding and the date and details of any decree granted.

AND TAKE NOTICE that unless a decree of divorce granted at the trial is made final at that time, it may only be made final upon a further application to the court made after the expiration of three months or less, as the court may order.

AND TAKE NOTICE that an application to make a decree of divorce final may be made without further notice to you unless in the meantime you deliver to this court office and to the petitioner and to the Attorney General, a written Notice that you wish to show cause why the decree should not be made final and your ground therefor.

AND TAKE NOTICE that neither spouse is free to remarry as a result of these proceedings until a decree of divorce has been granted and such decree has been made final.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at on the day of , 19 ..

.....
(local registrar)

.....
(address of court office)

PETITION

The petitioner claims a decree of divorce from the respondent spouse,
and the following corollary relief:

- (a)
- (b)
- (c) (etc.)

on the grounds and in the circumstances set out hereunder:

(set out such information in paragraphs numbered and lettered as follows:)

1. GROUNDS:

- A. This Petition is under the *Divorce Act* (Canada), section ,
subsection (and section , subsection
as the case may be)
- B. The particulars of the grounds for the divorce are
*(set forth fully but concisely all the material facts relied on
but not the evidence by which they may be proved)*

*(In a case under section 4, subsection (1), paragraph (c), set
forth the last place of cohabitation, the circumstances in
which cohabitation ceased, the date when and the place where
the respondent spouse was last seen or heard of and the steps
taken to trace him).*

2. RECONCILIATION:

- A. The particulars of the circumstances which may assist the
Court in ascertaining whether there is a possibility of recon-
ciliation or resumption of cohabitation are
- B. *(where applicable)* The following efforts to reconcile have
been made

Appendix of Forms

Form 72A

3. PARTICULARS OF MARRIAGE

(where possible, set out the particulars from the marriage certificate)

- A. The date of the marriage was the day of , 19 ..
- B. The place of the marriage was
- C. The surname of the wife before marriage was
- D. The maiden surname of the wife was
- E. The marital status of the spouses at the time of the marriage was, wife: , husband:
- F. The wife was born in*(province or country)* on the day of , 19 ..
- G. The husband was born in *(province or country)* on the day of , 19 ..

4. DOMICILE AND JURISDICTION:

(Street address need not be shown in A and B below)

- A. The residence of the petitioner is in the municipality of , in the Province of
- B. The respondent spouse's residence is in the municipality of , in the Province of
- C. The petitioner ceased to cohabit with the respondent spouse on or about the . . . day of , 19 ..
- D. The domicile of the petitioner is
- E. Such domicile has subsisted since the day of , 19 ..
- F. The petitioner *(or the respondent spouse as the case may be)* has been ordinarily resident in the Province of Ontario for a period of at least one year immediately preceding the presentation of this petition and has actually resided in the said province for at least ten months of that period at *(set out place or places of residence)*

5. AGE AND DISABILITY:

- A. The names of any of the parties under 18 years of age and the ages of such parties are
- B. The names of the parties suffering any other legal disability and the nature thereof are

6. CHILDREN:

- A. The names and dates of birth of all living children of the marriage as defined by the *Divorce Act* (Canada) are
.....
- B. The particulars of the past, present and proposed custody, care, upbringing and education of the said child(ren) are as follows:
.....
- C. The petitioner claims custody of the following child(ren):
.....
- D. The facts on which such claim for custody is founded are:
.....

7. OTHER PROCEEDINGS:

- A. The particulars and status of all other petitions or proceedings instituted with reference to the marriage or any child thereof, including applications to the Parliament of Canada or actions for alimony or applications under any statute and including any arrears of payment thereunder are:

8. SEPARATION AGREEMENTS AND
FINANCIAL ARRANGEMENTS

- A. The dates of any written or oral separation or financial agreements between the parties are:
- B. *Where a claim for corollary relief is made:*
The Financial Statement of the petitioner, in the form prescribed by the Rules of this court, is attached hereto.

9. COLLUSION, CONDONATION AND CONNIVANCE

- A. There has been no collusion in relation to this Petition.
- B. *Where the petition is under section 3 of the Divorce Act (Canada) state:* There has been no condonation of or connivance at the grounds for divorce set forth in this Petition. *(or, where there has been either connivance or condonation, give the full particulars of the facts on which the Court will be asked to find that the public interest would be better served by granting the decree).*

10. DECLARATION OF PETITIONER:

I have read and understand the Petition. Those statements contained therein of which I have personal knowledge are true, and those of which I do not have personal knowledge I believe to be true.

Dated at , this day of , 19 ..

.....
(signature of petitioner)

.....
(address for service)

11. STATEMENT OF SOLICITOR
(Where Petition is presented by a solicitor)

I, , solicitor for the petitioner, certify that I have complied with the requirements of section 7 of the Divorce Act (Canada). *(Where the circumstances of the case are of such a nature that it would clearly not be appropriate to so comply, set out such circumstances).*

Dated at , this day of , 19 ..

.....
(signature of solicitor)

Appendix of Forms

Form 72A

12. PLACE OF TRIAL

The petitioner proposes that this proceeding be set down for trial before a local judge of the High Court (*or at a regular sittings of the High Court as the case may be*) at

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 72B

FORM FOR SERVICE BY PUBLICATION

In the Supreme Court of Ontario

NOTICE to:

A Petition for Divorce (*where applicable add: and for maintenance, and for custody and maintenance of the infant child) and for costs (as the case may be)* has been filed by the petitioner You may inspect the Petition at the court office at or you may request the court office to mail a copy to you.

If you wish to oppose the Petition or seek other relief, your Answer or Answer and Counter-Petition must be delivered in accordance with the rules of this court. If you fail to deliver an Answer, you will not be entitled to notice of any further proceedings.

.....
(*solicitor for the petitioner*)

.....
(*address*)

APPENDIX OF FORMS

FORM 72C

ANSWER

(Court, Court File Number, Style of Cause)

ANSWER

1. The respondent admits the allegations contained in paragraphs numbered of the Petition for Divorce.
2. The respondent specifically denies the allegations contained in paragraphs numbered of the Petition for Divorce.
3. The respondent pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Petition for Divorce.

Set out in separate consecutively-numbered paragraphs, each allegation of a material fact relied upon by way of an answer to the Petition for Divorce.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 72D

REPLY

(Court, Court File Number, Style of Cause)

REPLY

1. The petitioner admits the allegations contained in paragraphs numbered of the Answer .
2. The petitioner specifically denies the allegations contained in paragraphs numbered of the Answer. .
3. The petitioner pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Answer.

Set out in separate, consecutively-numbered paragraphs, each allegation of a material fact relied upon by way of reply to the Answer.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 72E

COUNTER-PETITION

Where the Counter-Petition is against the petitioner only, it shall follow immediately after the last-numbered paragraph of the Answer.

COUNTER-PETITION

The petitioner by counter-petition claims:

..... (state here the precise relief claimed)

Then set out in separate, consecutively-numbered paragraphs (following in sequence the last-numbered paragraph of the Answer) each allegation of a material fact relied upon to substantiate the counter-petition.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

Where the Counter-Petition is against the petitioner and another person, a further style of cause shall be added to that appearing at the beginning of the Answer, as follows:

And between:

C.D.

Petitioner by Counter-Petition
and

A.B. and X.Y.

Respondents by Counter-Petition

and the following shall appear immediately after the last-numbered paragraph of the Answer:

COUNTER-PETITION

NOTICE to X. Y.

TAKE NOTICE that this Counter-Petition has been issued against the petitioner and yourself;

AND TAKE NOTICE that if you wish to defend this Counter-Petition, either you or an Ontario lawyer acting on your behalf shall prepare your Answer to Counter-Petition (in the form prescribed in the Rules of this Court) and serve it on the petitioner by counter-petition or his lawyer and, with proof of such service, file it in this Court Office,

- (a) where you are served in Ontario, WITHIN 20 DAYS after service on you of the Petition for Divorce and this Answer and Counter-Petition; or
- (b) where you are served out of Ontario, but elsewhere in Canada or in one of the United States of America, WITHIN 40 DAYS after such service on you; or
- (c) where you are served anywhere else in the world, WITHIN 60 DAYS after such service.

AND TAKE NOTICE that if you fail to do so, you may be deemed to have admitted the Counter-Petition of the petitioner by counter-petition and, without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

THIS NOTICE is signed and sealed for the Supreme Court of Ontario by Local Registrar of the Court at , on the day of , 19 ..

Court
Seal

.....
(local registrar)
.....
(address of Court Office)

Appendix of Forms

Form 72E

The petitioner by counter-petition claims:

..... (state here the precise relief claimed)

Then set out in separate, consecutively-numbered paragraphs (following in sequence the last-numbered paragraph of the Answer) each allegation of a material fact relied upon to substantiate the counter-petition.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 72F

ANSWER TO COUNTER-PETITION

*(Court, Court File Number and same Style of Cause
as in the Answer and Counter-Petition)*

ANSWER TO COUNTER-PETITION

1. The respondent by counter-petition admits the allegations contained in the paragraphs numbered of the Counter-Petition.
2. The respondent by counter-petition specifically denies the allegations contained in paragraphs numbered of the Counter-Petition.
3. The respondent by counter-petition pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Counter-Petition.

Set out in separate, consecutively-numbered paragraphs each allegation of a material fact relied upon by way of answer to the Counter-Petition.

DATED at , this day of , 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 72G

REPLY TO ANSWER TO COUNTER-PETITION

*(Court, Court File Number and same Style of Cause
as in the Answer and Counter-Petition)*

REPLY TO ANSWER TO COUNTER-PETITION

1. The counter-petitioner admits the allegations contained in paragraphs numbered of the Answer to Counter-Petition.
2. The counter-petitioner specifically denies the allegations contained in paragraphs numbered of the Answer to Counter-Petition.
3. The counter-petitioner pleads that he has no knowledge in respect of the allegations contained in paragraphs numbered of the Answer to Counter-Petition.

Set out in separate, consecutively-numbered paragraphs each allegation of a material fact relied upon by way of reply to the Answer to Counter-Petition.

DATED at , this day of , 19 . .

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 72H

(Court, Court File Number, Style of Cause)

FINANCIAL STATEMENT

I , of.....(*place of residence*)..... ,
..... (*description*) , make oath and say:

1. Particulars of my financial situation and of all my property are accurately set out below, to the best of my knowledge, information and belief.
2. Where I have received income or where deductions have been made from my income or where I normally pay expenses on other than a monthly basis, for the purposes of this Statement, I have converted such income, deductions and payments to a monthly basis.

GROSS MONTHLY INCOME		MONTHLY DEDUCTIONS FROM INCOME	
Salary, Wages	\$	Income Tax	\$
Commissions, Bonuses	\$	Union or other dues	\$
Pension	\$	Unemployment Insurance	\$
Family Allowances	\$	Group Insurance	\$
Workmen's Compensation	\$	Health Insurance Plan	\$
Unemployment Insurance	\$	Pension Plan	\$
Public Assistance	\$	Canada Pension	\$
Support from others	\$	Credit Union Loan	\$
Dividends and Interest	\$	Savings Plan	\$
Other Income	\$	Other Deductions	\$
	-----		-----
TOTAL INCOME	\$	TOTAL DEDUCTIONS	\$
LESS:			
TOTAL DEDUCTIONS	\$		

NET INCOME	\$		
	=====		

MONTHLY EXPENSES

(excluding items previously shown as deductions from Income)

Housing:		Health and Medical:	
Rent or Mortgage	\$	Doctors, Chiropractors,	
Taxes	\$	etc.	\$
Home Insurance	\$	Dental Care	\$
Heating	\$	Insurance Premiums	\$
Water	\$	Drugs	\$
Hydro	\$	Other medical or dental	
Phone	\$	expenses	\$
Cable T.V.	\$		
Repairs & Maintenance	\$	Life Insurance Premiums	\$
Gardening & Snow		Tuition Fees, Books etc.	\$
Removal	\$	Entertainment	\$
Other Housing Expenses	\$	Recreation	\$
		Vacation	\$
Food:		Gifts	\$
Groceries	\$	Babysitting, Day Care	\$
Meals Outside Home	\$	Children's Allowances	\$
		Children's Activities	\$
General Household Supplies	\$	Support Payments	\$
		Newspapers, Periodicals	\$
Clothing:		Alcohol, Tobacco	\$
Personal	\$	Charities	\$
Other	\$		
Laundry, Dry Cleaning	\$	Monthly Loan Payments:	
		Banks	\$
Transportation:		Finance Companies	\$
Public Transit	\$	Credit Unions	\$
Taxis, Car Pools	\$	Department Stores	\$
Car Insurance	\$	Other Creditors	\$
License	\$		
Car Maintenance	\$	Savings	\$
Gasoline, Oil	\$	Other Expenses	\$
Parking	\$		
Personal Care:		TOTAL	
Hairdresser, Barber	\$	MONTHLY EXPENSES	\$
Toilet Articles	\$		
		NET INCOME	\$
		LESS:	
		MONTHLY EXPENSES	\$
		SURPLUS/DEFICIT	\$

ASSETS		LIABILITIES	
Real Estate:		Total amount owing on:	
Type.		Mortgages	\$
Address		Bank Loans	\$
Estimated Value of my		Finance Company Loans	\$
interest	\$	Credit Union Loans	\$
Type.		Department Store	
Address		Accounts	\$
Estimated Value of my		Other Credit Card Accts.	\$
interest	\$	Promissory Notes	\$
		Guarantees	\$
Furniture	\$	Other Debts:	
Appliances	\$	\$
Household Effects	\$	\$
Clothing	\$		
Jewellery	\$	TOTAL LIABILITIES	\$
Works of Art	\$		
Car (market value):	\$		
Year:			
Make:.....			
Boat	\$		
Other Vehicles	\$		
Employee Pension Fund	\$		
Registered Saving Plans:			
Retirement	\$	TOTAL ASSETS	\$
Home Ownership	\$	LESS:	
		TOTAL LIABILITIES	\$
Saving Accounts	\$		
Chequing Accounts	\$	NET WORTH	\$
Securities:			
Shares.			
Shares.			
Bonds.....			
Bonds.....			
Other			
Estimated Value	\$		
Life Insurance:			
Company			
Cash Surrender Value	\$		
Money on Loan			
to	\$		
to	\$		
Accounts Receivable	\$		
Cash on Hand	\$		
Other Assets:			
.....	\$		
.....	\$		
TOTAL ASSETS	\$		

Appendix of Forms

Form 72H

Where an explanation is deemed necessary as to any items set out in this affidavit, or where the space provided is not sufficient to allow for a complete disclosure of all income, expenses, assets and liabilities, further paragraphs of explanation shall be added to this Statement.

Where any interest is held in an unincorporated business or a controlling interest is held in an incorporated business, the name of the business shall be stated, together with particulars of the interest held and the estimated value thereof.

3. The name and address of my employer is

4. There are no material changes anticipated in the information given in this Statement (or, where applicable: The particulars of material changes anticipated in the information given in this Statement are).

5. Attached hereto is a true copy of the last Income Tax Return filed by me with the Department of National Revenue including all schedules and supporting material filed therewith, and a true copy of any Notice of Assessment or Reassessment received by me from the said Department for that year.

SWORN before me at the)
of, in the)
..... of this) (signature)
..... day of 19 ..)

.....
A Commissioner, etc.

APPENDIX OF FORMS

FORM 72 I

DECREE NISI

In the Supreme Court of Ontario

Court File Number

Before (*title and name of*) day, the day of
)
presiding judge) , 19 ..

Court (Style of Cause)
Seal

DECREE NISI

This proceeding coming on this day for trial at the sittings of this Court at , in the presence of counsel for the petitioner, no one appearing for although served with the Petition for Divorce and the Notice of Trial (*as the case may be*), upon hearing read the pleadings and hearing the evidence adduced, and what was alleged by counsel aforesaid:

(Where the decree may be made absolute in less than three months, to the foregoing, add:

and the Court being of the opinion that by reason of special circumstances it would be in the public interest for the decree to be made absolute after the expiration of from the date hereof, and the parties having agreed and undertaken that no appeal will be taken from this decree)

1. THIS COURT DECREES AND ADJUDGES that the petitioner , whose marriage to the respondent was solemnized at the of , in the of , on the day of , 19 .. , be divorced from the said respondent unless sufficient cause be shown to this Court within from the date hereof why this decree should not be made absolute.

2. AND THIS COURT ORDERS AND ADJUDGES that
..... *(as the case may be)*

3. AND THIS COURT FURTHER ORDERS AND AD-
JUDGES that *(as the case may be)*

4. AND TAKE NOTICE that the petitioner and the res-
pondent spouse are not free to remarry as a result of these pro-
ceedings until this Decree Nisi has been made absolute by the court.

.....
(local registrar)

.....
(address of court office)

APPENDIX OF FORMS

FORM 72J

DECREE ABSOLUTE

In the Supreme Court of Ontario

Court File Number

Before (*title and name of*) day, the day of
presiding judge)
)
) , 19 ..

Court

(Style of Cause)

Seal

DECREE ABSOLUTE

The petitioner (*or* the respondent spouse *as the case may be*) having applied for a decree making absolute the Decree Nisi herein whereby this Court decreed and adjudged that the petitioner be divorced from the respondent spouse unless sufficient cause be shown to this Court within from the date thereof why the said Decree Nisi should not be made absolute, and no such cause having been shown:

1. THIS COURT DECREES AND ADJUDGES that the Decree Nisi herein granted on the day of , 19 .. , be and it is hereby made absolute and that the petitioner , whose marriage to the respondent was solemnized at the of , in the of , on the day of , 19 .. , is hereby divorced from the said respondent.

Where a Decree Absolute is granted at the trial, for the foregoing, substitute:

This proceeding coming on this day for trial at the sittings of this Court at in the presence of counsel for all parties (or as the case may be), upon hearing read the pleadings and hearing the evidence adduced, and what was alleged by counsel aforesaid, and the court having granted a decree nisi, and the parties having agreed and undertaken that no appeal will be taken by reason of special circumstances it would be in the public interest for a decree absolute to be granted at this trial:

- 1. THIS COURT DECREES AND ADJUDGES that the petitioner, whose marriage to the respondent was solemnized at the of in the of, on the day of, 19 .., be divorced from the said respondent.
- 2. AND THIS COURT ORDERS AND ADJUDGES that (as the case may be)
- 3. AND THIS COURT FURTHER ORDERS AND ADJUDGES that (as the case may be)

.....
(local registrar)

.....
(address of court office)

APPENDIX OF FORMS

FORM 73A

NOTICE TO FILE FINANCIAL STATEMENT

(Court, Court File Number, Style of Cause)

NOTICE

TO:

TAKE NOTICE that whether or not you intend to defend this proceeding you are required, under Section 5 *(or Section 23 as the case may be)* of *The Family Law Reform Act, 1978*, and the rules of this court, to file with the court and serve on the applicant *(or as the case may be)* a Financial Statement in Form 72H of the Appendix of Forms to the said rules.

AND TAKE NOTICE that under the rules you must file and serve your Financial Statement within days after service on you of this Notice.

AND TAKE NOTICE that if you do not file and serve your Financial Statement as required, the applicant *(or as the case may be)* intends to make a motion to the court, without further notice to you, for an order compelling you to file and serve your Financial Statement.

DATED at, this day of, 19 ..

Conclude the Form as to name and address (with the appropriate changes) as in Form 16A.

APPENDIX OF FORMS

FORM 73B

WARRANT FOR ARREST OF RESPONDENT OR DEBTOR

COURT

Court File Number

Before (*title and name of*) day, the day of
(*presiding judge*))
 , 19 ..

Court Seal (Style of Cause)

WARRANT FOR ARREST

TO: All Sheriffs and other peace officers in the
Province of Ontario:

WHEREAS proof has been made before me that an order for support (*or an application for an order for support as the case may be*) has been made under *The Family Law Reform Act, 1978* against (*where applicable, add:*
and that the said has been served with in the proceeding);

AND WHEREAS proof has been made before me that the said is about to leave the Province of Ontario with intent to evade his obligations of support under *The Family Law Reform Act, 1978*;

YOU ARE HEREBY ORDERED to apprehend the said and deliver him to the Superintendent of the Provincial Jail in the jurisdiction where he was apprehended, there to remain in custody until you have notified this Court accordingly and a further order has been made.

.
(signature of judge)

APPENDIX OF FORMS

FORM 73C

RECOGNIZANCE

(Court, Court File Number, Style of Cause)

RECOGNIZANCE

I,, of *(full address)*
acknowledge that I am indebted to Her Majesty the Queen in the
amount of \$ to be levied from my property under a Writ of
Seizure and Sale in favour of Her Majesty the Queen if I fail *(or,*
where the Recognizance is being entered into by a surety, substitute:
if, of *(full address)*, fails to
abide by any of the following conditions:

That until the day of, 19 .., *(or*
until otherwise ordered as the case may be) I shall not
(or, where the Recognizance is being entered into by a
surety, substitute: shall not)

(a) enter on the premises known municipally as
.....;

(b) speak to, telephone, write to or otherwise communi-
cate with;

(or as otherwise ordered)

.....
(signature)

This Recognizance was signed before me at
on the day of, 19 ..

.....
(registrar, or as may be directed)

APPENDIX OF FORMS

FORM 75A

STOP ORDER

COURT

Court File No.

Before (*title and name of*) day, the day
presiding judge or officer)) of , 19 ..

(*Style of Cause*)

STOP ORDER

Upon the application of , and
upon reading the affidavit of , and upon hearing the
solicitor for (*applicant*) , and the applicant
by his solicitor submitting to be bound by any order the Court
may make as to costs or damages occasioned by this order:

1. IT IS ORDERED that any costs or moneys now in Court
or hereafter to be paid into Court to the credit of this proceeding
to which is entitled or which may be directed
to be paid to him and any interest to accrue due thereon not be
paid out or otherwise dealt with or disposed of without notice to
the said (*applicant*)

**TARIFF “A”
Fees and Disbursements
Supreme Court and County Courts
Allowable Under Rule 59.08**

TARIFF OF FEES FOR THE SERVICES OF A SOLICITOR AND OF DISBURSEMENTS ALLOWABLE TO A PARTY ENTITLED TO COSTS IN A PROCEEDING IN THE SUPREME COURT OR A COUNTY COURT AND IN A PROCEEDING UNDER ANY STATUTE BEFORE A JUDGE OF THE SUPREME COURT OR A JUDGE OF A COUNTY COURT OR BEFORE ANY JUDICIAL OFFICER

PART 1 - FEES

1. Pleadings:

Includes preparation for an commencement of defence of an action. This item covers all services except those of motions, up to and including delivery of pleadings, up to \$75.00

Subject to increase, in the discretion of the taxing officer, in cases involving up to \$15,000.00, up to \$150.00, and in cases involving over \$15,000.00, up to \$250.00.

2. Discovery of Documents:

This item includes affidavits of documents, requests to inspect and production for inspection, up to \$40.00

Subject to increase, in the discretion of the taxing officer, in cases involving up to \$15,000.00, up to \$100.00, and in cases involving over \$15,000.00, up to \$200.00.

3. Drawing and settling issues on stated cases \$50.00

Subject to increase, in the discretion of the taxing officer, up to \$250.00.

TARIFF "A" (continued)

4. Counterclaim against an added party,
a Cross-Claim or a Third Party Claim \$25.00
5. Setting down for trial \$20.00
6. Motions \$50.00

Including preparation, counsel fee, and the
settling, signing and entering of order.

Subject to increase, in the discretion of
the taxing officer, in cases involving up to
\$15,000.00, up to \$150.00; in cases involving
more than \$15,000.00, an increased fee may
be allowed in the discretion of the taxing officer.

7. Applications:

Including all preliminary proceedings, notices,
affidavits, services, etc., correspondence,
preparation, counsel fee on hearing and
attendance to hear judgment, up to \$150.00

Subject to increase, in the discretion of
the taxing officer. A fee to junior counsel on
the application may be allowed in the discre-
tion of the taxing officer.

8. Examinations, up to \$75.00

For each examination for discovery or cross-
examination of a party or witness other than
at a trial or hearing, including preliminary
proceedings, preparation and counsel fee.

Subject to increase, in the discretion of
the taxing officer, in cases involving up to
\$15,000.00, up to \$150.00; and in cases
involving more than \$15,000.00, an increased
fee may be allowed in the discretion of the
taxing officer.

TARIFF "A" (continued)

9. Pre-Trial Conference \$50.00

Including preparation, counsel fee and preparation of memorandum and order.

Subject to increase, in the discretion of the taxing officer, in cases involving up to \$15,000.00, up to \$150.00, and in cases involving more than \$15,000.00, an increased fee may be allowed in the discretion of the taxing officer, up to \$250.00.

10. For all Notices \$25.00

Including request to inspect, notice of payment into court or offer in writing to settle, notice of acceptance, notice to admit and request for admission.

Subject to increase, in the discretion of the taxing officer, in cases involving up to \$15,000.00, up to \$100.00, and in cases involving more than \$15,000.00, an increased fee may be allowed in the discretion of the taxing officer, up to \$200.00.

11. Preparation for Trial

Including correspondence, brief at trial summoning witnesses, acceptance of monies paid into court or acceptance of offer in writing to settle or on settlement \$250.00

An increased fee may be allowed in the discretion of the taxing officer.

TARIFF "A" (continued)

12. Trial

Including counsel fee, written argument and attendance to hear judgment, in the discretion of the taxing officer, up to \$250.00

An increased fee and fee to junior counsel may be allowed in the discretion of the taxing officer.

13. Judgment or Order

Settling, signing and entering judgment or order, whether obtained on default or otherwise, where not included in any other item in this tariff.

To the party having carriage \$25.00
To other parties \$10.00

Subject to increase, in the discretion of the taxing officer, up to \$75.00

14. Appeals

(1) To an Appellate Court

Including all preliminary proceedings, notices, services, etc., appeal books, statements of law and fact, preparation, counsel fee on a motion for leave to appeal, counsel fee on appeal and attendance to hear judgment in the discretion of the taxing officer.

A fee to junior counsel on the argument of the appeal may be allowed in the discretion of the taxing officer.

TARIFF “A” (continued)

(2) To other than an Appellate Court \$50.00

Including preparation, counsel fee, and the settling, signing and entering of order.

Subject to increase, in the discretion of the taxing officer, in cases involving up to \$15,000.00, up to \$150.00; in cases involving more than \$15,000, an increased fee may be allowed in the discretion of the taxing officer.

15. References

Including all preliminary proceedings, notices, affidavits, appointments, services, etc., attendances, correspondence, preparation, counsel fee on reference, report, including attendances and signing same, serving and filing report, in the discretion of the taxing officer.

In addition to the above fee, in the discretion of the officer taxing, additional fees may be allowed in a sale action for preparation of conditions of sale and advertisement, arranging for advertising and for auctioneer, conducting sale, arranging for payment of purchase price and for the preparation of a conveyance where one is executed or for arranging a private sale.

The fees provided in the above paragraphs may be taxed by the officer hearing the reference or by the taxing officer, subject to any direction in the order of reference.

TARIFF "A" (continued)

16. Writ of Seizure and Sale and each renewal thereof \$10.00
17. Obtaining Order to Continue and service thereof where occasioned by the death or the transmission of interest of an opposite party \$50.00
18. Taxation of Costs

The taxing officer may, in his discretion, award or refuse the costs of a taxation to either party, such costs to be taxed by him when and as allowed.

NOTES TO TARIFF "A" - PART I

- (1) Where questions of special importance and difficulty are involved or matters of substance are determined, a further increased fee or a fee to junior counsel may be allowed in respect of items 1, 2, 6 and 9 in the discretion of the taxing officer.
- (2) Where, for any reason the services covered by an item were not completed, the fees may be apportioned by the taxing officer.
- (3) Any item of a counterclaim may be taxed as in a separate action and any item common to claim and counterclaim may be apportioned or divided.

PART II - DISBURSEMENTS

19. Conduct money payable to witnesses, excluding parties to the action, unless the party is required to attend under Rule 55.05
- (1) Each day of necessary attendance \$40.00

TARIFF "A" (continued)

- (2) (a) where the trial is held in the city in which the witness resides, \$1.00 for each day of necessary attendance at trial;
 - (b) where the trial is within 200 miles of where the witness resides, 40 cents a mile or 25 cents a kilometer between his residence, the place of trial, and return;
 - (c) where the trial is more than 200 miles from where the witness resides, the minimum return air fare plus 40 cents a mile or 25 cents a kilometer to and from airports, his residence and the place of trial; and
 - (3) Where the witness resides elsewhere than the place of trial and is required to remain at the place of trial overnight, \$40.00 for each overnight stay.
20. Fees recoverable from opposite party
- (1) Conduct money actually paid to a witness.
 - (2) A reasonable sum may be allowed for the preparation of any plan, model or photograph when necessary for due understanding of the evidence.
 - (3) Reasonable sums may be allowed for medical reports, hospital records, and the reports of experts used or intended to be used at trial which have been supplied to the opposite party at least 10 days before trial.
 - (4) The cost of the investigation and report of the Official Guardian.

TARIFF "A" (continued)

- (5) A reasonable sum may be allowed for fees actually paid to a witness who appears and gives opinion evidence, up to an amount of \$250.00 for each day of giving evidence and each additional day authorized by the trial judge and subject to increase in the discretion of the taxing officer.
 - (6) A reasonable sum may be allowed for fees actually paid to an interpreter for services at trial or on an examination, up to \$75.00 per day, subject to increase in the discretion of the taxing officer.
 - (7) Where ordered by the presiding judge, such travelling and accommodation expenses incurred by a party to an action as, in the discretion of the taxing officer, appear reasonable.
 - (8) A reasonable sum to cover the cost of copies of any documents or authorities prepared by a party for the use of the court, and supplied to the opposite party.
-
- 21. The cost of certified copies of documents such as judgments, orders, birth, marriage and death certificates, abstracts of title, deeds, mortgages and other registered documents where made exhibits.
 - 22. The cost of transcripts of proceedings of courts or tribunals when required by the court or the rules, or where, in the discretion of the taxing officer, reasonable required for the preparation for trial or where necessary to the due understanding of the evidence.

TARIFF “B”
Fees in Uncontested Divorce Proceedings
Allowable Under Rule 72.27

**TARIFF OF FEES FOR THE SERVICES OF A SOLICITOR ALLOW-
ABLE TO A PARTY ENTITLED TO COSTS IN AN UNCONTESTED
DIVORCE PROCEEDING**

1. Pleadings, up to \$60.00
2. Discovery of Documents, up to \$20.00
3. For each examination of a party or a witness
prior to trial, except an examination or
cross-examination for use on a motion,
but including preliminary proceedings,
preparation and counsel fee, up to \$75.00
4. For each uncontested motion before trial,
including preliminary proceedings,
affidavits, preparation, counsel fee and
order, up to \$20.00
5. For each contested motion before trial,
including preliminary proceedings,
affidavits, cross-examination, preparation,
counsel fee and order, up to \$75.00
6. Counsel fee on pre-trial conference, up to \$20.00
7. Counsel fee at trial, including preparation,
up to \$180.00
8. Settling, signing and entering Decree Nisi,
including taxation of costs, up to \$20.00
9. Motion for Decree Absolute, including
preparation, counsel fee and order, up to \$30.00

TARIFF “C”
Commission Allowable Under Rule 59.08 (1) (e)

On the first \$1,000	15 per cent
On every \$100 over \$1,000 and up to \$2,500	5 per cent
On every additional \$100 over \$2,500 and up to \$5,000	4 per cent
On every additional \$100 over \$5,000 and up to \$10,000	3 per cent
On every additional \$1,000 over \$10,000 and up to \$15,000	2 per cent
On every additional \$1,000 over \$15,000	1 per cent

TARIFF "D"
Costs Allowed on Sales, Leases and Mortgages of Land
Under The Devolution of Estates Act

To the Solicitor for the Personal Representative

1. Where sale price or amount of mortgage is under \$200. . . . \$10.
 Where it is over \$200, up to and including \$400. \$12.
 Where it is over \$400, up to and including \$600. \$15.
 Where it is over \$600, up to and including \$800. \$20.
 Where it is over \$800, up to and including \$1,000. \$25.
 Where it is over \$1,000, up to and including \$1,500. 2½%
 Where it is over \$1,500, up to and including \$2,000., \$7 plus 2%
 Where it is over \$2,000,
 up to and including \$3,000, \$17 plus 1½%
 Where it is over \$5,000, \$57 plus ½ of 1%

Where a part of the land of an estate has been sold, in the case of any subsequent sale, three-fourths of the foregoing amount shall be allowed.

2. In addition to the above amounts there shall be allowed,
 - (a) the cost of taking out letters of administration or letters probate and of succession duty affidavits as fixed by the Surrogate Court Rules, where there is no personal estate out of which such costs can be paid;
 - (b) the proper disbursements for advertising for creditors where there is no personal estate out of which such disbursements can be paid;
 - (c) where the sale is by auction, the auctioneer's fee and the costs of all necessary printing of advertisements; and
 - (d) the fees paid to valuers.

TARIFF "D" (continued)

Costs of Official Guardian

3. The costs of the Official Guardian shall be one-third of the amount allowed under item 1., and his actual disbursements.

Special Allowances

4. Where special circumstances render the amount taxable under this tariff unreasonable or inadequate, a judge may order the allowance of a smaller or larger sum.

NOTE: In applying this tariff to leases, the amount shall be deemed to be the annual rental multiplied by the number of years in the term.

